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# OVERSIGHT OF THE TRADE ACT OF 1988

## HEARING

BEFORE THE

## COMMITTEE ON FINANCE
## UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

MARCH 1, 1989

**(Part 1 of 3)**

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# OVERSIGHT OF THE TRADE ACT OF 1988

WEDNESDAY, MARCH 1, 1989

U.S. SENATE,
COMMITTEE ON FINANCE,
WASHINGTON, DC.

The hearing was convened, pursuant to notice, at 10:00 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the committee) presiding.

Also present: Senators Baucus, Bradley, Rockefeller, Daschle, Packwood, Roth, Danforth, Heinz, and Symms.

[The press release announcing the hearing follows:]

[Press Release No. H-7, February 7, 1989]

SENATOR BENTSEN ANNOUNCES HEARINGS ON OVERSIGHT OF TRADE ACT OF 1988

WASHINGTON, DC—Senator Lloyd Bentsen (D., Texas), Chairman, said today the Finance Committee will vigorously oversee implementation of the Omnibus Trade Competitiveness Act of 1988.

Bentsen announced the first two oversight hearings have been scheduled for *Wednesday, March 1, 1989, and Thursday, April 20, 1989, at 10:00 a.m.* in room SD-215 of the Dirksen Senate Office Building.

Senator Bentsen said, "The new Trade Act sets some specific requirements on the new Administration with regard to trade policy, and we have reason to be concerned these requirements may not be fully implemented on time."

As example, he cited news reports last month that the White House had taken too long to write rules enforcing a ban on goods from the Toshiba Machine Company of Japan, during which time Toshiba imported millions of dollars of goods into the U.S.; reports that Japan will lobby for less than full enforcement of Section 301 of the Act; concern that the failure of the December review of multilateral trade negotiations in Montreal will slow the Uruguay Round talks past deadlines set in the new law; and failure of the U.S. Treasury to live up to terms of the new law to negotiate on an expedited basis with foreign countries that Treasury has already said are unfairly manipulating their currencies.

## OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This is the first in the series of hearings where we will be monitoring the Trade Act of 1988. We will be scheduling these hearings well in advance. And frankly, our purpose is to see that the administration understands that we are monitoring what action has been taken on the trade bill that we have enacted.

The Ways and Means Committee is doing some monitoring, and other committees of the Congress have scheduled their oversight hearings. The members of this committee have invested an incredible amount of time in the enactment of the Omnibus Trade and Competitiveness Act of 1988, and I for one don't want to see that time and effort going to waste by a failure of implementation of the law that we have put on the books.

I want to point out to members of this committee that there are a number of countries that are out to kill this bill before Ambassador Hills even has a chance to utilize it, to employ it. Countries that as a matter of fact have a policy involving the theft of intellectual properties, that run protectionist trade, that are fighting to keep services and investment out of multilateral trade negotiations. They are trying to label this bill as "unilateralist."

Now, I know of no one associated with the enactment of this bill on this committee, or the rest of the Senate or the House, or the business community, or organized labor, or the Bush administration, who wants to use this new law to steal foreign patents, to close the American market, or to make the General Agreement on Tariffs and Trade any weaker than it already is. We read many times that GATT only applies to 7 percent of the world trade as it now stands.

This committee wants our new law to be used to improve intellectual property protection, to open up world trade, to expand the role of GATT, and to expand world trade. That is our objective. That is what we were pushing for as we developed this legislation.

Quite frankly, I am surprised—maybe I shouldn't be—that some of our trading partners are trying to destroy this bill. I would have thought they would want the President to be authorized to negotiate the expansion of GATT; I would have thought they would have as much at stake as we have in protecting intellectual property rights and improving agricultural trade policies, in protecting the basic rights of workers, and in preventing currency manipulation.

The United States ought to be willing to stand up for these principles—and I am convinced our trade ambassador is—because they serve the interests of all countries, and they also serve the vital national interests of this country. And our Government has the job of standing up for vital national interests around the world.

Now, we have moved with these oversight hearings pretty early. That is with a purpose, of course, because I believe that trade is one of the most important single problems that this country is facing. And although we have brought the deficit down, somewhat, through the devaluation of our currency, it seems to have plateaued, and we don't see any sharp, continuing decline of that trade deficit.

If there is one thing that we have learned in the last 8 years, it is that there is no silver bullet, there is no panacea for the trade problem; it is very complicated, and we need to move forward on many fronts on it.

As a result, that Trade Act requires a number of things on the part of the administration, each of them relating to different aspects of a very complicated problem.

Today, March 1, is the deadline for the administration's reports on the operation of the trade agreements program, the national trade policy agenda, the projection of trade data. Several deadlines on such reports came up last fall and were not met. Several of them came due earlier this year. Some of these have not been met.

In some cases, I think, frankly, that a few days delay resulted in a better document, maybe focused more thought on the problem, such as the delay in required responses on the problem of developing country debt.

But when I hear blanket objections to deadlines, I recall how many years we went without a trade policy. I recall how long the members of this committee worked on that Trade Act.

Deadlines and lists can produce results, especially if they are used with a sense of purpose. It is amazing how they can help people collect their thoughts. Congress can't administer the Trade Act, we can't do the negotiations; we shouldn't try to. But we can insist that the spirit and the letter of the law be carried out, and that we be consulted on the direction of trade policy, and I have been very pleased with what Ambassador Hills has done in that regard in the way of consultation.

But deadlines give us, as well as the administration, the tools for formulating and carrying out a trade policy.

I recognize that Ms. Hills has not had much time; she was only confirmed, I guess, about a month ago.

However, I have very little patience with complaints that there is not enough time to act on these matters. The Trade Act has been the law of the land for more than 6 months; most of the important provisions of the Trade Act have been well known for a year or more.

The trade deficit is again on the increase. Each month we fail to set forth a trade policy is one more month in which we increase the debt of this country, and that debt is like a tax on our future.

So what we want to do today is look at the implementation of the Act so far, and to ask some questions about how it is going to be implemented in the few months ahead.

We recently had meetings with Ambassador Hills. We had a frank exchange; we expressed our views with her in private last week. And I know from my discussions with her that she wants to make this law work, and that she is really for expanding the world trading system. We want to do all we can to be helpful in that regard.

We very much appreciate having you here today.

[The prepared statement of Senator Bentsen appears in the appendix.]

The CHAIRMAN. Are there comments? Senator Baucus?

Senator BAUCUS. No, I don't have any statement. I will wait until Ambassador Hills has spoken. Thank you.

The CHAIRMAN. Senator Heinz?

Senator HEINZ. Mr. Chairman, I do have a statement.

## OPENING STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM PENNSYLVANIA

Senator HEINZ. First I would like to welcome Ambassador Hills before the committee, Mr. Chairman.

I must say, as I reflect, Carla, on your job and the struggle that you have in your position, as well as ours, to transcend all the day-to-day crises—beef hormones, agricultural subsidies, informatics, textiles, steel, and all the other issues that I am sure we will address today, I hope that as you assume control over the trade portfolio, you will give the necessary time and attention to some of the more fundamental and frankly even more difficult challenges that will shape our trade and economic policies for many years to come.

What I am referring to is that over the past several years we have taken an increasingly strong stand in favor of open trade and the free market system. At the same time we seem to have broken our pick over and over again on such things as Japanese barriers, cultural or otherwise, to our products.

We are obviously with EC–1992 facing a major challenge as it moves towards its common internal market.

On occasion we have been in good company, as with intellectual property, but much of the time our stand has been a somewhat lonely one, particularly when the discussion turns to subsidies and other market-distorting actions. So today I would like to challenge you to consider some of the more subtle aspects of our position.

A couple of questions to consider as we go through the day:

One, in the face of practices that effectively restrict U.S. market access in other nations, does our current approach to free trade have the effect of imperiling the United States' preservation of its own technological base?

Two, will licensing the transfer of technology to Japan for the FSX, for example, undermine the current competitive advantages enjoyed by the U.S. aerospace industry and thereby threaten the long-term viability of our own producers?

Are our negotiators or our business people in that industry, in that example, getting too little and giving away too much? And is this a national issue?

Three, does the uncontrolled flow of foreign investment into the United States relieve us of pressure which would otherwise cause us to take more decisive action to deal with our budget deficit, a deficit that is increasingly financed by foreign lenders, and which as a consequence not only saddles our kids with huge debts but puts the lever of foreclosure in foreign debt-holders' hands whose interests are probably different from ours?

Four, does the increasing number of foreign acquisitions, given the large number which have occurred that deliver technology, know-how, trade secrets, all of which are important for maintaining U.S. technical superiority, threaten the integrity of our industrial base and/or our national security?

Five, if we have lost our technological lead in key sectors, especially critical industries of the future like HDTV, what is in our national interest to do? And does the Government have any responsibility to take steps to rescue our technological lead?

Now, I have the luxury of saying to you I don't have answers to those questions, which is convenient, because my real job today is to ask them, not to answer them. You have to answer them at some point. Maybe you can't do it today, but I guarantee you that these are questions we will be asking not only today but for some years to come, and they seem to me to be critical to our future.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I would hope that any further questions would be deferred to the question period.

Senator HEINZ. Those are not questions; that is a statement, Mr. Chairman.

The CHAIRMAN. Well, thank you.

Senator Rockefeller?

[No response.]
The CHAIRMAN. Senator Danforth?
[No response.]
Madam Ambassador, if you would proceed.

## STATEMENT OF HON. CARLA A. HILLS, U.S. TRADE REPRESENTATIVE

Ambassador HILLS. Mr. Chairman and members of the committee, I am very pleased to be here this morning. I have filed yesterday a prepared statement, and to save some time I thought it might be useful for me just to summarize it.

My prepared statement places particular emphasis on the national trade policy agenda for the coming year. The Act, as the Chairman mentioned, requires the President to submit to the Congress today that agenda. Actually, we submitted it yesterday.

In preparing this trade policy agenda we sought the advice of Congress and the other executive agencies, our private sector advisory committees, as well. We need to continue that cooperative effort in implementing the agenda.

We face huge challenges. The global deficit remains high. The multilateral trading system is woefully in need of modernization. Key areas of economic activity are not covered, and too many of the countries maintain closed markets.

Our trade policy by itself can't solve all these problems. Much of the deficit stems from macroeconomic factors. This administration, however, recognizes that the Trade Act seeks to promote important objectives: strengthening international trade rules through a broad grant of trade-negotiating authority, promoting market access for competitive industry through the use of new procedures and new remedies, integrating trade policy with broader economic policy initiatives in order to facilitate positive adjustment by the United States' industries, and better policy coordination throughout the Government in order to assure maximum attention to America's trade objectives in this new era of global competition.

Setting forth our objectives is only the first step; to bring them to fruition we must make creative use of the range of tools provided by the Omnibus Trade Act, and we must use all of the rights and opportunities that accrue to us under international agreements to which the United States is a party.

Our strategic goal is to open markets, not close them; to create an ever-expanding international trading system based upon equitable and enforceable rules.

The Uruguay Round is clearly a top priority on our trade agenda this year. The administration's general objective in these negotiations are drawn from the 1988 Act and are familiar to this committee. When we met in closed session last week, we had the opportunity to discuss them in some detail.

I will not take the time here to review the material set forth in my prepared statement with respect to the Uruguay Round; let me just say that we are vigorously applying ourselves to what has been the key stumbling block, namely, agriculture.

Secretary Yeutter and I will travel to Brussels on March 10 and 11. By the end of March 1 will have met with or talked to most of

the key players in the agricultural talks. I am not prepared to sacrifice fundamental substantive interests for the sake of allowing the Round to proceed; however, I believe there is so much determination by almost all countries to succeed that we will find a solution to the outstanding issues that will enable the Round to go forward without having to give up our fundamental objectives.

Beyond our multilateral efforts in the Uruguay Round, we will pursue vigorously and responsibly the elimination of barriers by our trading partners through bilateral consultation and negotiations.

We will continue to implement our free trade agreements with Canada and Israel. Last month I accompanied President Bush to Ottawa, where I had a good discussion with Minister Crosbie about the major issues on our bilateral agenda.

Implementation of the free trade agreement is our first priority with Canada. Minister Crosbie and I have agreed to a first meeting of the Trade Commission, which we head, on March 13, and I believe we are off to a good start.

Another priority issue we are pursuing on the bilateral front is EC–1992. We will monitor closely initiatives in the Community and develop effective policy responses to those European Community measures which unfairly discriminate against U.S. exporters or investors.

The enormous bilateral deficit in our trade with Japan is another cause for concern. Last month I received an important report from the Japan Task Force of our private sector Advisory Committee for Trade Policy and Negotiations. I have requested the Trade Policy Review Group to review our trade policy with respect to Japan, based upon this report and upon consultation with our advisors regarding our other trading partners in the Pacific.

Let me now focus on a matter that I know is of great interest to the committee, the New Market Access provisions of the 1988 Act. I will be consulting with you as we develop our priorities for negotiation in the Super 301 process. I view that process as an excellent opportunity for us to determine where to concentrate our efforts over the next 2 years, where to use Section 301 in as effective manner as possible.

We are currently quantifying the benefits of eliminating various foreign trade barriers in order to select priorities. Our focus will be on areas where we have the greatest export potential.

The quantification process is not an easy one. We have martialed the expertise of other agencies and our private sector advisors to accomplish this task. The interagency Section 301 Committee is beginning the necessary analysis of these trade barriers, and we will consult closely with you as we approach the task of preparing the final priority list in May.

With respect to Special 301, we give high priority to improving the intellectual property protections. Self-initiated Section 301 cases can be an effective means of gaining improved protection, and we will continue to pursue on parallel tracks our bilateral efforts and our multilateral negotiations in the Uruguay Round.

We will also be pursuing market-opening initiatives in telecommunications. I recently submitted a report to you on this subject,

and we need to consult further as these negotiations unfold. I intend to pursue these negotiations vigorously.

Finally, on our regular 301 agenda we have a dozen active cases. In some cases we are still pursuing GATT dispute settlement; in others we are engaged in bilateral consultations; and in still others we are continuing to monitor the results of a settlement agreement or responsive action taken under Section 301.

In all instances, it is my intention to use the leverage of Section 301 to bring down foreign unfair practices. I provided you with an updated table of cases that reflects their current status, and soon I will be submitting the semiannual Section 301 Report covering the second half of 1988.

Let me comment briefly on the need to coordinate our policies and action. For example, Section 301 can provide important leverage in pursuing our Uruguay Round objectives.

Our goal, as you said, Mr. Chairman, is to open foreign markets. The broad choice, in the term used at my confirmation hearings, is, "When to use the crowbar and when the handshake." We cannot fall into the trap of suspending all actions against unfair trade practices on the ground that they will spoil the atmosphere for the Uruguay Round. On the other hand, we will not achieve our objectives of opening multilateral markets simply by closing our own markets, and there will be tough choices.

And there will frequently be very difficult trade-offs that entail some cost. A concrete example is our recent dispute concerning Brazil's refusal to provide patent protection for pharmaceuticals and fine chemicals.

After years of trying to resolve this issue bilaterally, we initiated countermeasures under Section 301. We decided that the most effective step would be to impose restrictions on merchandise imports from Brazil. Now Brazil has challenged our actions, contending that they are inconsistent with our commitments under the GATT.

Many of our trading partners have criticized us for raising tariffs which we agreed in GATT not to raise, but we had to make a choice, and our choice was to put the world on notice that we cannot rule out trade restrictive measures in response to theft of U.S. intellectual property. I believe we have taken the right course of action.

We have to be ready to act in defense of principle, and in doing so, we will continue to consult with you on these very tough choices.

I am pleased to answer your questions.

[The prepared statement of Ambassador Hills appears in the appendix.]

The CHAIRMAN. Thank you.

You referred to the committee, the advisory committee from industry, and some of their comments. I noted in their recent report that one of the subcommittees said that if the barriers that are met by American exporters in Japan were removed, we could have from $5 to $30 billion in additional exports to Japan.

If those numbers are serious numbers, I don't see how we can keep from—by the time you have the May 30 report—naming Japan as one of those countries where we have a trade priority to open those markets.

I also note that they advised you, or advised the President, to delay the initiation of Super 301 procedures against Japan for 1 year as they try to work out some kind of a negotiation to bring those barriers down.

Now, I recognize, as I know do the members of this committee, that one of the greatest things that you have in Super 301 is the leverage, the pressure, to try to open up those markets with the threat of its utilization.

What I am asking is, the only way I can see that Japan would not be named by May 30 would be if we had some kind of an agreement from Japan, that we felt had some substance, that they would be opening up those markets and dropping those barriers within a reasonable period of time.

Has the administration at this point asked for any such agreement in their negotiations?

Ambassador HILLS. We are continually negotiating with Japan with resect to a number of sectoral markets. I have reviewed the report that our advisory committee prepared and to which you allude. We have in process an interagency review group analyzing the trade with the Japanese, and we are giving that matter very, very careful attention.

I cannot tell you which country should be named as a priority country at this point. I think it is premature before the analysis is complete to name countries or practices. Even leading up to the preparation of that listing, we are engaged in negotiations. And although the time is not extensive, I would like to use the time to try to negotiate as much favorable movement as we can with all of those countries, including Japan, who have barriers to our exports.

The CHAIRMAN. Well, I can understand. But nevertheless, you face that deadline, and a decision has to be made by then. The only way I could see that they would not be named would be, again, if you had some kind of a serious commitment out of Japan to reduce those barriers.

We are also concerned about circumvention of the Trade Act as we passed it last year, and I think that is particularly true in the anti-dumping and countervailing duty area. It occurs to me that we could have that kind of a problem also in Section 301 actions.

For example, in 1987 the United States imposed retaliatory tariffs valued at $165 million worth of Japanese exports to the United States. That was because of Japan's failure to live up to the commitments to improve market access for U.S. semiconductors.

Nearly 2 years have passed since those sanctions were imposed, and we still don't have Japan living up to the agreement on market access.

Do you think that the retaliation in the semiconductor case is having any impact? Are the Japanese circumventing it in some way? Would you comment on that?

Ambassador HILLS. We have difficulty with the implementation of that agreement by Japan. The sanctions levied did cause a small increase in the opening of the semiconductor market, but since then it has been relatively flat, and we are watching that market carefully. And that is a section of the market that does in fact concern you. I share your concern.

The CHAIRMAN. On Europe-1992, all during the trade bill consideration here we had ambassadors of the various countries that are major trading partners, we had their lobbyists, we had their trade ministers, time and time again visiting with the members of this committee and members of the Ways and Means Committee, trying to get their point across, and of course meeting also with people in the executive branch.

I noted a statement by the new Trade Ambassador that we should be given a seat at the table. I don't see any such formal seating, obviously; but to what degree are we monitoring, negotiating, getting our points of view across, as these decisions are being made in Europe today?

Ambassador HILLS. We have a series of negotiations that have been ongoing for many, many months with the representatives of the European Community, and we have ongoing negotiations inside and external to the Uruguay Round. Many of the issues in the Uruguay Round are the very same issues that concern us with respect to the "one market" that we look forward to dealing with respect to Europe-1992. We are in regular consultation and are dealing with our counterparts.

Indeed, we have a group that is working directly with the Economic Policy Council within the executive branch, a working group that is analyzing all of the aspects of this revolutionary change in the economic structure of Europe. So I think that we are carefully reviewing the various options and opportunities.

The CHAIRMAN. If we do one-tenth of what they did in their monitoring of ours and in trying to influence, I would be delighted.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

## OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Ambassador Hills, I would like to focus a little bit on Japan. You know of all the reports that the USTR is required to submit to the Congress, and frankly I sometimes think the number is a bit high. The USTR has so many reports to submit.

I don't engage in this show-and-tell stuff very much, but I was just struck a few days ago with just how many reports the USTR is required to submit over the next several months. And as the Chairman said, some have been submitted on time and some not.

The other side of that coin is that we tend to not see the forest for the trees; that is, if we are focusing so much on submitting reports on time, both ends of Pennsylvania Avenue tend to forget what our major objectives are, what are we really up to, and what are we trying to accomplish.

I mention that because, as you well know, our trade deficit with Japan is the largest by far and also is a trade deficit that is not improving very much. In fact, some people feel that the deficit is actually increasing, at least if the last 3 months figures are any indication.

We also note that our trade deficit with the European Community in 1988, last year, improved 40 percent; whereas, our trade defi-

cit with Japan improved only I think 7 percent, and Japan is two-fifths of our worldwide trade deficit.

In addition to that, other organizations are coming forth in frustration, in analysis, to point out some of the deeper problems we have with Japan. One is the Institute for International Economics, another is Brookings, and both of them are now saying, in their words, "The pervasive system of trade barriers with Japan keep imports to Japan at about 40 percent below the normal levels for a developed economy."

I think there is probably a lot of truth in that. One organization has the estimate, I think, of 25 to 40 percent, another 35 to 50 percent. But anyway, 40 is about in the middle there somewhere.

Because of that, major private industry groups now are making very major changes in policy suggestions as to how to deal with Japan. One is ACTPN, your private industry advisory group, which recommends that we Americans begin to negotiate targets in certain sectors where there are invisible barriers to trade, that we negotiate macroeconomic agreement with Japan, including our budget deficit reduction and stimulating their economy—that is, where we agree to numbers in the targets—a very major change. And as you know, ACTPN spent thousands of hours, with hundreds of interviews, trying to come up with a solid recommendation.

ECAP, the Emergency Committee for American Trade, a group of about 67 major American companies. Their exports comprise 33 to 45 percent of American exports to Japan. They, too, recommend now a very formal agreement with Japan—a major step forward in trying to deal with the frustration that we have accumulated over the years in trying to open up barriers to trade in Japan.

So, I am asking what is the USTR approach to Japan going to be? Will it use the ACTPN report as the basis for USTR trade policy? And if not, what will the basis be?

Ambassador HILL. We have an interagency task force looking at our bilateral trade relationship with Japan.

I have personally read the Advisory Committee for Trade Policy and Negotiation (ACTPN) report, and I think it is a very good report. It makes many good points. I am not suggesting a dramatic policy change based upon one report; I want to get the interagency feedback, and there are other reports, as you have mentioned.

There is an accumulation of frustration in dealing with Japan. There is no question that this administration prefers to approach trade problems with the goal of opening markets and mutually agreeing to reduce barriers to entry. But where that is not possible, these reports suggest that there may have to be a choice between managed trade, which I think, and this administration thinks, produces less positive results than open trade, and a targeted course urged by the ACTPN group.

But we are evaluating all the commentary. I cannot tell you a policy change has been made.

Senator BAUCUS. What about the use of targets?

Ambassador HILLS. We have used targets with Japan, for example in the semiconductor field. We have used targets not quite as precise as that in our Moss talks. So they are not foreign to us.

I think economic learning would teach that we are all better off if we have open trade. But if a country refuses through invisible

barriers to permit open trade, then we may not be able to have our optimum process or goal, and this is something we are evaluating.

Senator BAUCUS. But don't targets at least give us an indication, that measure our success or lack of success? Without targets it is very difficult to measure success or lack of success.

I think that we can more creatively utilize targets, and I encourage all of us to try to do so. I think we will find that we will end up advancing the ball much more quickly than if otherwise it is business as usual and we don't use targets.

Thank you.

The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. Chairman, will we have two rounds of questioning today?

The CHAIRMAN. If they are requested, we will have them.

## OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

One of the provisions of the Trade Act has to do with trade adjustment assistance. Senator Heinz and others, myself included, were very concerned that we came into the new calendar year with trade adjustment assistance money for displaced workers and the money was gone. There was no money—no money for training. It took the Department of Labor 6 months to designate that these workers were, in fact, dislocated by virtue of imports.

One of the items we put in the Trade Act was a very small ad valorem tariff, 0.15 percent on everything that comes into this country. Now, that has to be negotiated at the GATT for a period of a couple of years. If the negotiations do not succeed, then, there are other possible avenues.

Let me say that we are going to run out of TAA money again this spring. Training funds are going to be gone in March. Cash benefits will be gone by the fall. Thousands of people will end up exactly as we were discussing a year or so ago.

Number one, I would like to know if you are aware of this 0.15 percent ad valorem tariff. Number two, in that you are responsible for the negotiations and the 2-year negotiating period runs out in 1990, what is your approach to this problem? What discussions are you contemplating with respect to this in GATT?

Ambassador HILLS. Senator, I am aware of the problem, and I was aware of the 0.15 ad valorem tax to provide training. It has not received a hospitable response in our negotiations in GATT. Most of the nations of the world resist even a small tariff imposed for whatever the reason.

We have tried to get a working group appointed within GATT, as opposed to making it part of the Uruguay Round, and that too is something that has received very few supporters. But we are working at it—that is, working at getting a working group.

I cannot tell you what our fallback position will be, other than to say there may be other approaches. We could possibly join with the International Labor Organization and try to work out some sort of an analysis. But, I would be lacking in candor were I not to tell you that the tariff approach, the small additional cost on all imports, is

one that the community of nations opposes as violative of our treaty obligation under GATT not to raise tariffs.

Senator ROCKEFELLER. I understand why that would be so, and I also understand the tragedy of the situation we find in this country. Other nations have found it possible through their public policies to adjust more effectively than we have, and that is our fault. But, nevertheless, when one looks, for example, at steelworkers or coal miners, you are dealing with destroyed families, discouraged workers, downward spiraling drinking problems, marital problems, and all the rest of it.

I would like to know, even though there is resistance, that you support the Trade Act provision—it is the law—that is meant to lead to this 0.15 percent tax which will produce $300–400 million, all of which will go for worker retraining. That is, as you meet resistance, you will not be discouraged by it, but you will persist.

Ambassador HILLS. I will uphold the law.

Senator ROCKEFELLER. Well, I know that. [Laughter.]

But if you continue to meet resistance or not find much enthusiasm, you can turn to other matters or you can persist, and it is the persistence quality that I am looking for.

Ambassador HILLS. We will persist. [Laughter.]

Senator ROCKEFELLER. All right. That is just a little marker.

Senator Bentsen was talking a moment ago about a variety of things, and one of the matters that came up was the market share for U.S. semiconductor sales in Japan.

Under the Semiconductor Agreement, the United States is meant to attain 20 percent of the market in Japan, and indeed, if you look at Fujitsu, Hitachi, NEC, Matsushita, and Toshiba, those top five companies are indeed at close to 20 percent.

But if you go to number 6, 7, 8, and so on, all of a sudden it drops down to 8 or 9 percent with an overall average of 10 percent or perhaps, 11 percent. This says to me that MITI is talking to the top five, and who are responding but that the industry as a whole is not, and that the government is not. Thus, our goals are not being met.

What do we do about that?

Ambassador HILLS. We are negotiating with Japan on this issue, amongst others, and we are concerned. The agreement does not call for 20 percent today, but rather by 1991. However, on a linear progression, they won't get to 20 percent by 1991, and that is a concern to us. We are worried about the lack of commitment to this agreement which we entered into as friendly bilateral trading partners.

The semiconductor sector is on my agenda. It is very much on my agenda, and that as much as several of the other items, some of which Senator Baucus mentioned, caused me to ask for an interagency review of our specific trade problems with Japan and to bring together an interagency thinking about these problems.

Senator ROCKEFELLER. I understand and would simply ask you to look at why the first five companies are so different than the others.

The CHAIRMAN. Thank you, Senator.

Senator Heinz?

Senator HEINZ. I would like to follow up where Senator Rockefeller left off on the issue of the semiconductor agreement. I would like to try to put that in the context of how non-performance on such an agreement fits in relationship to being designated as a priority country on or before May 30.

Is it your view that not complying with an agreement would be a substantial reason to designate a country as a priority country?

Ambassador HILLS. Certainly not complying with an agreement is a serious charge, and under 301 we are to take certain actions where there are violations of agreements, and I am aware of those.

The Super 301 process requires us to analyze what are the barriers that particular countries have put up, quantifying those barriers, and trying to compute how those barriers affects exports.

So I would say that it isn't just the breach of an agreement that would cause you to designate; but, certainly, that is a very serious charge against a trading partner.

Senator HEINZ. Let me put it this way: If it is a serious cause for being put on the priority-country list, that trade-distorting barriers exist, and that it is of substantial financial importance and economic importance to the United States, that would seem to be one kind of problem.

If those determinations had already been made, and if an agreement to try and cure them, because both sides agreed that they should be cured, had been made, and that agreement was not complied with but was being broken, that would seem to me to be even more serious, because it would imply not only the existence of the original problem but it would also imply bad faith. Wouldn't that be far more serious?

Ambassador HILLS. We take very seriously transgressions of agreements that we have entered into. Now, we have had problems with several countries in failing, for a variety of reasons, to implement agreements. Some of them are because of their change of law, some of them are because they lack capacity to deal with the subject, and in each instance we take it very, very seriously.

Senator HEINZ. I am a little confused by what you are saying, but what I think you are saying is that failure to live up to a major agreement—and this is a major agreement, we all understand that—is not prima facie evidence that a country should be on the priority list. Is that right?

Ambassador HILLS. First of all, the statute Super 301 requires us to quantify what the exclusion is.

And let us go back, since you are talking about Japan. The Semiconductor Agreement, as I understand it, quantifies trade that is aspired to by 1991. We are disappointed, but I suppose there is at least the argument that at this point we cannot with great clarity claim breach.

Now, putting that aside, assume a breach by Japan or any other country. I would suspect that if it were a $2 million item, that we might find it difficult. But then, again, I can think of a bilateral dispute that we have now that involves not much more than $5 million but it involves an enormous principle.

The ultimate question is how much will the removal of the barrier cause our market to open. What is the export potential? What is the precedential effect?

Senator HEINZ. So you are saying——

Ambassador HILLS. It is a factor to be considered.

Senator HEINZ. And you are also saying that on semiconductors the only marker on Japan is what happens in 1991; there is really no agreement with them on what happens between the time of the agreement and 1991?

Ambassador HILLS. No, I didn't say that. I told you that we were in negotiations. I also told you what the claim might be on the other side. And because there seems to be an impression here that there is a clear breach now, I wanted to clarify at least that fact.

I can say no more than that in the 30 days that I have been at USTR, I have looked at our trade relationship with the Japanese. I regard their barriers to trade as very serious, and that the semiconductor agreement is one area where I have serious concern. We have in these past 30 days formed an interagency trade policy review group to look at our overall trading relationship with Japan. We are taking our relationship with them very, very seriously.

Senator HEINZ. There is something I am just not clear on. See if I have it right. Are you saying that it is possible for you, under certain hypothetical circumstances, to find a breach now and do something about it, as happened in 1987? Or are you saying that that is not even theoretically possible?

Ambassador HILLS. I am saying that we have made a strategic choice here to try to negotiate with the Japanese within the timeframes that you have set for us, and it is extremely difficult——

Senator HEINZ. I understand.

The CHAIRMAN. Thank you. We will have another round of questioning.

Senator HEINZ. Yes. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth?

## OPENING STATEMENT OF HON. JOHN C. DANFORTH, A U.S. SENATOR FROM MISSOURI

Senator DANFORTH. Mrs. Hills, let me talk about Super 301, because I do know the thinking behind it, as Senator Bentsen and I were the authors of it.

During the consideration of the Trade Act of 1988, really for years, as we were working on this Super 301 concept, I was repeatedly asked, "Well, is this a provision that is directed at Japan?" My answer was, "Well, it really isn't directed at Japan; it is more general than that. It is directed at countries that have patterns of excluding U.S. goods and services."

But while Super 301 was designed to be aimed at more than Japan, it was not aimed at anything less than Japan. And therefore, the thought that is floating around, including the ACTPN report, that maybe we should consider leaving Japan off the list, is to me totally contrary to what we had in mind when this provision was put into the law in the first place. And the idea that "we have 3 months now, let's hurry up and scramble to see if we can reach some sort of interim arrangement or agreement to negotiate, so as to keep Japan off the list again" is contrary to what was intended by this provision.

This provision was not designed to be something that could be switched on and off in 3-month intervals, or switched on and off depending on what has been done with respect to semiconductors, or any other single category. It was designed to be a provision that was consistent, that was long range, that was broad, that was the opposite of the sporadic and the ad hoc.

I would just like to say to you that this co-author of the provision would really be startled and very disturbed if Japan were not on the list for any reason, because I would view it as a statement that Super 301 really, at its outset, in the first months of its operation, is going to be something that will be circumvented and something that will be abandoned, and something that will be up for short-term negotiations and short-term satisfaction according to what the latest promise is from Japan.

I say this—it really is not a question. But I really want to state to you in the strongest possible terms that Super 301 was clearly written with Japan in mind—not limited to Japan, not Japan-bashing", as they say—but it was intended to provide a long-range consistent effort to open the markets of other countries, and Japan has always been Exhibit A among the countries that have maintained practices, and policies of excluding the goods and services of other countries.

So I just say that in the next 3 months maybe it is something that you would consider. I don't know if you want to respond to it now or not.

Ambassador HILLS. Senator Danforth, you put a process in place in the law that you asked us to implement, and that process requires that we identify countries and the restrictive practices and quantify them.

There is a certain period of time where negotiations can occur. I think you are more interested in results than what we say about it today. The process calls for identification and analysis that goes through May 1989.

We all know that there are restrictions and countries that have some restrictions, but you asked us to quantify them. Now, with respect to the semiconductor agreement that we have talked about here, we do have retaliation in place. And you know that when the Prime Minister came there was much speculation that the Prime Minister would ask the President to lift that sanction. There was no lifting of the sanction.

Senator DANFORTH. Can I just interrupt because my time is running short? I did not ask you, and we did not ask you when we put this provision in place, to scramble, to try to prevent the provision from ever going into effect before May 30. We did not ask you to do that. We did not ask you to hustle in order to prevent the carrying out of the provisions of Super 301 in the first place.

Ambassador HILLS. We don't think we open markets, Senator, by simply having retaliation. We are trying to get results.

Senator DANFORTH. Retaliation is not designating the country in the first place. The designation of the country is not "retaliation." The designation of the country is simply what sets in motion the process.

It seems to me that what you are doing now is scrambling, hustling, very, very fast in order to prevent the process from even commencing.

Ambassador HILLS. Well, let me correct your perception about that. That is not what we are trying to do. We are trying to follow the law. It is extremely difficult to make an analysis of both the barrier, and the amount of imports that we will get out of removing the barrier; that is what the law requires us to do. It doesn't require us to list countries and practices that bar our exports on March 1; it requires us to deliver to you a report on May 30. We intend to do that in consultation with you and I hope you will share and help us. It is clear to me that your view is certainly precise with respect to Japan. I have noted that. We will continue this consultation.

The report is not due, and I think you would be quite critical were we simply to list countries without our analysis.

The CHAIRMAN. It is obvious we are going to need a second round of questions.

Senator Packwood?

## OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM OREGON

Senator PACKWOOD. Ambassador Hills, you can tell by the tenor of the questions that Japan is uppermost in our mind. And secondly, every time we get into these debates, or every time you get into negotiations with Japan, it is kind of: "Buy our chips." "No—well, maybe." "Buy our beef and oranges." "No, no—well, maybe." And it is a battle every time we go down.

Is there any merit, therefore, to the theory of Henry Kissinger—and he has written on it several times, about the managed trade—that instead of us attempting to push a product, just say, "Japan, you have to come down $5 billion, $10 billion a year; you pick; you can buy more imports; you can sell us less things; you decide which products"? But it doesn't put them in the position of having to give in to the Americans, and we reach a conclusion we allegedly want to reach, realizing the conclusion might be they don't buy any more from us, they sell us less. I am not sure that is the conclusion we want, but that could happen. Would that be an easier way to go about this?

Ambassador HILLS. Well, it certainly wouldn't be consistent with our goal of opening worldwide markets.

Senator PACKWOOD. That is correct. If the goal is getting trade surpluses down, that might work.

Ambassador HILLS. We think that the community of nations is better off with open markets. As we said earlier, optimumly, it is far preferable to have free market access and eliminate barriers than it is to manage trade, because the market will do it better than the bureaucracy.

On the other hand, there are enormous frustrations built up over certain practices by certain countries, and Japan is one that is spoken of most frequently, or at least as frequently as any other.

The ACTPN report suggests a something between managed traded free trade; call it targeted trade. The report you talked

about talked in terms of just letting Japan decide whether to increase imports or to decrease exports, just fix the bilateral deficit. That approach has many down sides, I think, and certainly in terms of optimal trade.

But rather than prejudge the issue after 30 days, what we have put in place is an interagency trade policy review group to look at our trade relations with Japan. And I think that is the sensible way to proceed, to look at it very, very carefully.

We are in the process of doing that. It is consistent with the timeframe of our statute, of when we are obliged to provide a listing of priority countries and priority practices.

I think that, rather than prematurely to react or to act without a sound statement of facts, would be a mistake, and it would be a mistake for a lot of reasons.

So, we are trying to comply with the law, and we are analyzing the problem which we see just as large as you see it, and we will consult with you on what we see as the process is ongoing.

Senator PACKWOOD. I sense from the articles that Dr. Kissinger has been writing on this, for a number of years, before this report came out—and I don't know if he is connected with the report, as a matter of fact—he may have been thinking about it almost from the standpoint of diplomacy as much as trade, that an easier way to accomplish this is that you don't force the nation to back down product-by-product, or they think they have to back down, but you say to them, "You pick what you want to do and make the decisions yourself internally." It allows a great deal of face-saving. I don't know whether there is any merit to it or not, but I thought I would throw it out.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Daschle?

Senator DASCHLE. Thank you, Mr. Chairman.

## OPENING STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. I would like to shift gears, if I could for a moment, to Europe again and give you an opportunity, Ms. Hills, to clarify the current position that our Government has as well as the current situation with regard to the hormone ban.

My part of the country is somewhat confused as to recent developments with regard to our position as well as the current status of the negotiations. Our position has been, very rightfully, that there really is no indication whatsoever that hormones are a health concern.

I have applauded our negotiators for maintaining that position as resolutely as they have, but reports in recent days have indicated now it appears that we are, as one reporter has indicated, "caving in" to the Europeans with regard to the promotion of hormone-free beef for Europe as part of the negotiated settlement.

I haven't heard that officially from any member of your office or from the Government, and I would like to use what limited time I have for you to clarify that position, as well as what you can tell us about the current status of negotiations.

Ambassador HILLS. We regard the ban as exclusionary. We disapprove of it. We do not believe that it is based on science or medical fact. And we have resisted it for 18 months. We asked our European friends to let it be evaluated under the standards code that would assess its scientific merit, and they have refused. So at the end of the day we retaliated in equal measure against their imports of goods raising tariffs to $100 million or their goods.

When I arrived at USTR, there was a concern that we were not listening to each other and that this trade matter of $100 million was escalating. We met with Mr. Andriesson and Mr. MacSharry, Secretary Yeutter and myself, and after lengthy negotiations agreed to disagree. We still believe their ban is exclusionary and contrary to GATT. They believe our retaliation violates GATT.

We have put that disagreement to one side and have formed a task force, a high-level task force, in an effort to work out a solution to our differences in the next 75 days. We did that to find a solution and to avoid greater escalation at a time when we are also negotiating on the Uruguay Round.

Now, that is the current status of the matter. We have agreed to four meeting dates; we have agreed to meet and I am hopeful that somehow we can have a resolution of this dispute.

Senator DASCHLE. So, reports that I have been given relating to any commitment that our Government has made with regard to the promotion of additional certified hormone-free beef is false?

Ambassador HILLS. We certainly are not promoting anything. What we have said is: To the extent that beef is shipped from this country to the European Community, and they accept it, we would reduce our retaliation by a commensurate amount; so that, if they are accepting U.S. beef, and their ban is shrunk, we would, for our part, to that extent shrink our retaliatory action.

How much will be shipped and accepted? There hasn't been time to have a report.

Senator DASCHLE. But as you ship that beef, is it understood by the industry or by the Europeans that whatever beef is shipped under such an agreement would only be hormone-free?

Ambassador HILLS. No, that is not part of the agreement. Our agreement is that, to the extent we ship beef that is accepted, which implicitly would comply with their directive, that is their law, we would reduce our retaliation.

Senator DASCHLE. Well, that is the point. Apparently, some have understood that agreement as one which authorizes the promotion, if you will, of hormone-free beef to be accepted by the Europeans on their terms. That is where the concern is, that Europeans are saying, "We'll take your beef; it has to be hormone-free." We then say, "Well, if you will take hormone-free beef, we will reduce the barrier," almost conceding the argument that hormone-free beef is the only beef that they will take and thereby dropping the barrier on the whole issue that originally was devised, in the first place, to confront them on the hormone-free issue.

Ambassador HILLS. Well, that is an issue that the task force will work out. It did not seem wise to continue a retaliatory action during the 75 days if they were accepting our beef.

I have met with the cattlemen. I think they fully understand what we are doing and why we are doing it. The cattle industry is

not assisted by the publicity that is so negative during this period of time, and we are trying very hard to work out a solution.

I would be glad to meet with you and tell you how we got to where we are, and why I think it is a useful process.

Senator DASCHLE. I am out of time, and I would prefer to do that at some point in the future, if we could meet and discuss this a little bit further.

Ambassador HILLS. I would be pleased to.

Senator DASCHLE. Okay.

The CHAIRMAN. Thank you.

Senator Bradley?

Senator BRADLEY. Thank you very much, Mr. Chairman.

## OPENING STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. Ms. Hills, I would like for you to think with me a little bit about the interrelationship between Third World debt and trade.

If we look south to Mexico, we see a country that over the last several years has made a dramatic change in economic policy.

In terms of their internal budget deficit, for example, they have gone through the equivalent of three Gramm-Rudmans in terms of reducing their internal budget deficit. In terms of opening up their markets, they have petitioned to become a member of GATT, dramatically slashed their tariffs, a number of other steps. So now the question they most frequently ask is, "How do we get credit at GATT for a unilateral reduction of trade barriers?"

At the same time this occurred in the Mexican economy, you find U.S. wheat exports to Mexico dropped 80 to 90 percent. The reason is simply that the Mexicans don't have enough money to pay debt interest payments and principle payments and buy U.S. exports. So, U.S. exporters have been hit very hard in this process, as you well know.

So the issue in Mexico is clearly coming to a decision point. There is a crisis that is imminent. The question is going to be continuing debt policies that we have followed or going to debt reduction that will allow the Mexican economy to fully invest and buy U.S. exports.

Now, I have had this discussion with Clayton Yeutter a number of times. He has always been very supportive of the interrelationship, acknowledging it.

You are now in a new round of trade talks, and the question is: Don't you think that some form of debt reduction would assist you in getting developing-country agreements on services, on intellectual property, on TRIMS? Can we afford as a nation to continue to keep the debt issue on one track and the trade issue on another track, when in the developing world, on the issues that are absolutely essential to us, it is unlikely you are going to get the kind of agreement that you would if you were able to bring the two issues together?

Ambassador HILLS. I agree with you that they are, as some would say, "opposite sides of the same coin." The United States suffers more when the lesser-developed world is under financial difficulty

than some of our other trading partners, because we sell disproportionately to them.

We have supported measures in the GATT that would give credit to measures taken by countries such as Mexico; we speak in favor of special treatment for the developing world on occasion.

Senator BRADLEY. In your own view, what is the interrelationship between debt reduction and U.S. exports?

Ambassador HILLS. Well, I suspect you are asking almost a rhetorical question there. Obviously, if those countries saddled with a huge amount of debt could magically discharge it, then our trade might predictably, would be increased.

Senator BRADLEY. Our exports would be increased?

Ambassador HILLS. Yes. But it isn't as easy as that, and there is no magic. We have complicated issues, that I know the Secretary of Treasury is dealing with. The debt issue has all sorts of other ramifications. But the trade linkage is quite clear. We could not have a good policy resolution without looking into other considerations beyond our exports.

Senator BRADLEY. Well, let us say you are at the bargaining table and you are dealing with Brazil or India or Mexico, or some other developing country or group of developing countries, and you are trying to get agreement on opening up their markets for services, or intellectual property agreement.

Now, if you could put on the table some form of debt reduction, wouldn't that enhance your position in a negotiation?

Ambassador HILLS. We need all of the leverage we can get.

Senator BRADLEY. Thank you very much.

The CHAIRMAN. Senator Roth?

Senator ROTH. Thank you, Mr. Chairman.

## OPENING STATEMENT OF HON. WILLIAM V. ROTH, A U.S. SENATOR FROM DELAWARE

Senator ROTH. Many people think probably the most important economic development of the nineties is "EC-1992," and I think in many ways that is accurate.

One of my concerns, of course like everyone else, is that that doesn't turn out to be protectionist in nature—"Fortress Europe," as some would call it—and what steps we can take as an outsider to help ensure that the EC adopts liberal trade policies.

I know that there is some kind of interagency committee that acts here; but, because of the critical importance, I wonder if we need some kind of a task force in Brussels along the same kind of lines you have in the GATT negotiations to ensure that we keep abreast of developments and have the opportunity to comment.

Currently I know we have an EC Ambassador, who I think is working very hard in this area; so, what I say is not intended as any criticism of his efforts. But I wonder what role you and your office has, as well as the other agencies that have some voice in trade matters, if you are on the spot and seeking the opportunity to comment with the Europeans.

Ambassador HILLS We have a great deal of interaction with the Europeans, both in Brussels and particularly in Geneva, and we

have our Ambassador in Brussels, so I think that that is probably the best structure.

It is very important to remember that we have an interagency task force, which is a very broad task force of the economic policy council, at a Cabinet level, and it is analyzing and reflecting upon these massive changes that are ongoing in the European Community.

Keep in mind that, although some are very apprehensive, there are some great benefits that come from that "one market." Surely, the aggregate of $4 trillion in gross domestic product and the 320 million consumers will offer us some tremendous commercial opportunities. So, we want to work with the European Community to be able to participate in that.

And I do think that some of our negotiations during the Uruguay Round have both assisted us to understand what they are doing and assisted them to understand why we are asking for some of the measures that we are asking for.

We obtained some assistance, a "gentle wind," if you will, blowing through the Uruguay negotiations, based upon their experience with bringing their services together, and similarly so in dealing with intellectual property.

So we are not as discouraged as some of the articles would suggest.

Senator ROTH. Let me say I agree with you, that this is both an opportunity and a challenge, and I think on balance an opportunity. So I agree with your analysis.

At the same time, I am concerned as to whether or not we have adequate resources in Brussels, on the spot, following developments there as they unfold.

I gather from some of the comments I have heard that there is not as much transparency as would be desirable, say in the formation of the directives issued by the EC Commission, that there is not as much transparency as we have here, for example, in the formation of the standards.

So what I am suggesting is that I think it would be wise to look and see whether or not we have the adequate resources. For example, are the business and labor advisory committees able to comment with respect to EC 1992 in the same way they can on GATT negotiations?

Furthermore, I agree with you as to the interrelationship between EC 1992 and the Uruguay Round. How are we covering that problem? I am just concerned, as these difficult decisions are being made, and the most difficult ones are still ahead, that we have adequate representation.

If I might make one further point, Mr. Chairman—and I see that the light has already gone on—I was pleased before I got here that Senator Rockefeller talked about trade adjustment, a matter which of course I authored and am critically interested in. I think it is most important that we succeed in negotiating the fee to support this kind of assistance to those that are negatively impacted by trade.

I would just like to point out that it seems to me that there should be a very persuasive argument to the European Community

countries, because they are going to have some very difficult harmonization that is going to impact on their workers.

So I would urge that as the chief negotiator you try to sell them on the idea that, rather than pushing out their trade limitations to the EC border, they look at our trade adjustment program and fee as a means of providing for adjustment by their workers.

My time is up.

The CHAIRMAN. Thank you very much, Senator.

Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman.

Ambassador Hills, one of the questions I posed to you at the outset was a philosophical question. I mentioned one practice that effectively keep us out of many markets, practices that would appear, as Senator Roth and others have indicated, to be growing with the advent of EC–92, with such practices taking on increased significance as world trade grows. The markets in Japan and the EC as well as elsewhere are important, and Senator Bradley also points out the importance of Third World markets. We are all aware of the tremendous number of barriers—I know you are—that exist.

The question I have got is really a philosophical one, which is: Do you share the deep concern, which in my case I think at times almost rises to the level of alarm, that if we are unsuccessful in waging this war on many fronts and winning it, there is no way this country can maintain the economies of scale, the investment in research and development that is absolutely necessary for this country having any meaningful technological base?

I made allusion to the FSX issue, which you are familiar with. I alluded to high-definition television. As a case in point, there has been a lot of discussion today about semiconductors. And all for a very good reason—we are in danger of either not being players or losing technology because, in the case of Senator Danforth's particular concern about the FSX, the Japanese will not buy a fighter, an F-16, either improved or otherwise, and want the technology to build their own.

So my question is: Do you share the concern or alarm that many of us do that our economic future is really on line here, because our technological base is in grave and permanent jeopardy?

Ambassador HILLS. The agenda on trade and the need for us to open markets are enormous. These challenges are very significant to our economic well-being, without a question. And that is why we have placed the Uruguay Round as such a high priority.

If we can strengthen the GATT procedures and bring into the GATT discipline, not only goods, but services, investment, intellectual property, and agriculture, and have the community of nations adhere to disciplines that provide for open markets, the world community will be much better off and so will the United States.

Senator HEINZ. I think in theory that is right, but goods have been covered by GATT for a long time, and all of the instances I referred to involved goods.

Ambassador HILLS. Tariffs have been dramatically brought down, and the instances that you allude to were much greater earlier in history. The job is there to be done, but we really must work at it,

and we must understand as well that we are not without barriers in our own markets.

Senator HEINZ. I don't think that is the issue. I think the issue is: Do we understand the urgency of the situation? I must tell you honestly, you may; but I can't tell from your answer. You gave me a very good, legalistic answer, but didn't give me a sense of your assessment of where we stand. And if we are on a slippery slope, sliding down it, and that is your assessment, I would like to know. If you think we are in great shape, I would like to know it.

Ambassador HILLS. We have an enormous challenge. We are very concerned about these closed markets. We are alarmed.

Senator HEINZ. Okay. Good. This is not a trick question.

Ambassador HILLS. But the picture is quite complicated.

Senator HEINZ. That is an understatement.

One last quick question. I was informed today, going back to EC-1992, that new rules of origin on semiconductors have issued, and that now semiconductors, must be diffused in Europe to be European. The implication of that is, of course, a 45-percent Euro-content requirement, and that strikes me as just one more trade-distorting performance barrier that has snuck upon us courtesy of EC-92 implementation.

My question is, did we see it coming? Did our industry know about it? And if not; why not?

Ambassador HILLS. I think our industry was worried about it.

Senator HEINZ. They say they didn't, ahead of time.

Ambassador HILLS. Well, some with whom I have spoken have been worried about this type of action. Our concern is not so much the rule of origin focusing on diffusion but how it is joined up with its anticircumvention law. And, you know, we are focusing on that issue.

Senator HEINZ. My time has expired. My question was not what we are doing about it, the question is did everybody see it coming. We could talk about it on some other occasion.

Ambassador HILLS. I would be delighted to talk to you about it.

Senator HEINZ. Thank you very much, Carla.

The CHAIRMAN. Well, I share the concern of the Senator on procurement by the European Community. We may be able to adapt to the semiconductor regulations that they are talking about. But seeing it enacted there and seeing it then possibly used on other articles, what is our strategy on it? What are you trying to do in that regard?

Ambassador HILLS. With respect to rules of origin?

The CHAIRMAN. Yes.

Ambassador HILLS. We are trying to understand what the European Community is doing through regular consultation, and we have sectoral consultations ongoing. We have our advisory groups over in Europe doing business and consulting with us on the information that they have. We are trying to be very much up front and heads-up, knowing what is ongoing.

The CHAIRMAN. Thank you.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Ambassador Hills, I first want to associate myself with the remarks of Senator Daschle with respect to beef hormones. You know

as well as anyone the degree to which estrogen, for example, is consumed in Europe in the consumption of heifers—at a much higher rate, 500 to 600 times more than is a natural hormone implantation in steers. You know, therefore, that in large respect in Europe this is really a smokescreen, because of the degree to which Europeans already consume, naturally, estrogen, certainly in heifers.

I want to change to another subject, though.

I couldn't help but note your answer in response to Senator Rockefeller's question as to whether you will uphold the law. You said very graciously that, yes, you would uphold the law, and there was a reaction in the room; there was a little bit of humor and tittering, because obviously as the USTR you will uphold the law.

I don't want to let that pass over, though, without remarking that in the past administration there were Cabinet level officers who in fact would expressly say that if they disagreed with the law they would not uphold the law, they would not enforce the law. There is more than one who has made those statements in the past administration's Cabinet.

So it is heartening for me to learn and hear and for you to say that you will in fact uphold the law. So I want to ask you again: Will you uphold the law?

Ambassador HILLS. Yes, Senator Baucus, I will uphold the law.

Senator BAUCUS. Thank you.

That leads me to an agreement we have with Japan, and that is the beef/citrus agreement. I hope that you will, and I know that you will, very vigorously exercise your oversight responsibilities to make sure that that agreement is in fact lived up to on both sides of the Pacific.

I see a nod.

Ambassador HILLS. Yes.

Senator BAUCUS. I would like now to turn to a third matter, namely personnel in the USTR. I understand there is only one person in the USTR's office, a top policy person, whose full-time responsibility is Japan; whereas, the State Department I think has 10, and many other agencies have many more. And I know that as a member of the administration you will support the administration's budget.

But if the Congress were to add more personnel to the USTR's office, particularly with respect to Japan, what would your priorities be in how you would utilize that person?

Ambassador HILLS. Well, first of all we have more than one person dealing with Japan.

Senator BAUCUS. How many do you have?

Ambassador HILLS. We have the head of the Japanese section, the Assistant USTR. We have also a deputy who speaks Japanese.

You must understand what the mission of our agency is. We are not the State Department, and we are not the Commerce Department, nor Treasury nor Agriculture. We are 150 people within the Executive Office of the President

Senator BAUCUS. I understand that. But if we were to give you one or two additional people on Japan, how would you utilize those people? What would they be doing? What would your priorities be?

Ambassador HILLS. With respect to Japan?

Senator BAUCUS. Correct.

Ambassador HILLS. We could always find something for one or two people to do, without a question, and the better they are, the more we could find for them to do.

But you also must understand that our missions is to coordinate a coherent administration trade policy, so that we do benefit from tapping the resources from our colleague departments and having interagency participation.

Indeed, I recall at my confirmation there was criticism in at least one instance where there had been too little interagency consultation. Our interagency review groups are made up of people from all of the agencies involved in the particular issue, and of course you, the Congress, share responsibility on these tough issues. We want to consult with you so you can help shape the direction of the policy.

Senator BAUCUS. Before my time is up, one final point.

I sense your reluctance to get into, for want of a better expression, "targeting, managed trade," or what not. I worry that we have been hung up on the connotations of words. "Managed trade" conjures up all kind of images. "Open markets" conjures up other kinds of images.

What we are after is results. What we want is in fact open trade; we want in fact open markets. And because of distribution networks in Japan and other invisible barriers, it is very hard to use the legalistic structure to get at them. That is why some of us believe targets are a help. It is another tool that can be utilized to get at opening the Japanese market.

You are a lawyer. You are an excellent lawyer. But Japan basically rose to economic prominence with people other than lawyers, and I think that we in America tend to be too hung up on the legal process, because we are dealing with a culture that is not legalistic like ours is.

So when we are looking for results, I think it is important for us, to a great degree, to put aside American legal process. I say to a degree, because, if we are going to get results, we are going to have to understand that the way we get there is probably extra-legal; it is not using the legal process.

Ambassador HILLS. Well, in spite of the fact that I said I would uphold the law, I am not serving as a lawyer. And let me say with respect to results: economic learning worldwide—it is not the Stanford School or the Chicago School of Economics—teaches that the world community will be better off with open trade. And that is why our goal is for open trade. The fact that managed trade does not produce the results is why we do not embrace that notion.

If there is a country, as I said to you earlier, that we cannot deal with on an open-trade basis, then we may have to look for another means. But that is what we are doing with our interagency review group right now.

Senator BAUCUS. I don't want to get into the question of who has the last word; all I want to say is that I hope when you use the word "managed trade" you also think creatively of the positive ways in which we can target or use mechanisms other than legal processes. That is all I am saying.

Of course we don't want to close markets. Of course we don't want the negative connotations and the negative aspects and at-

tributes of "managed trade." But I hope we don't use those kinds of words in order to shoot down a legitimate, good-faith attempt to try to in fact open markets.

The CHAIRMAN. Thank you.

Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman.

As a result of recent negotiations American lawyers can practice in Japan, but there were substantial restrictions put upon them. One of these was that they could not represent American companies before the Japan Patent Office, those American companies trying to get patents. I merely note this problem for these firms.

Second, I want to congratulate the President on taking you to Canada with him. That shouldn't be surprising, but, in fact, it represents a major change from the last administration. I know that the chairman of this committee has spoken to the President. I have spoken to John Sununu about the importance of you accompanying the President wherever bilateral or multilateral trade matters are concerned or to the economic summits. The fact that you went to Canada is important and, as I say, indicates a welcome change of policy.

Steel VRA's are not exactly in the trade bill, so you will allow me to diverge for this matter.

The famous letter from then candidate Bush and Senator Heinz said, "One of the key trade policy goals of a Bush administration will be to achieve an international consensus on eliminating these practices and, pending that, I can assure you of my intention to continue the voluntary restraint program after September 30, 1989."

Yesterday, before the Ways and Means Committee, you said that a task force is being assembled to recommend how the administration should "flesh out its steel policy. Ms. Hills said that the administration has not yet decided to agree to that"—"that" being voluntary restraint. "She said that she will consult with both steel producers and steel users who want the restraints to lapse October 1"—that is, those who would oppose the Voluntary Restraint Agreements.

My question to you is: Do you reaffirm the President's assurance—and I use that word "assurance" because it is his—that Voluntary Restraint Agreements will be continued?

Ambassador HILLS. I believe what he said was that his preference was for an international consensus to rid the world of unfair trade practices in steel.

Senator ROCKEFELLER. That is correct.

Ambassador HILLS. And if he were able to achieve that, that would be his first choice. But pending that, he would extend the VRA's. And we are looking at what sort of measures could provide some content to the international consensus.

Senator ROCKEFELLER. Ms. Hills, I don't know you well, but I do know you well enough to know that you are not naive enough to think that after decades of governments either owning or fully subsidizing their steel industries, not only in Asia but also in Europe you are going to achieve, prior to the middle of this summer, some kind of an international understanding with respect to unfair trade practices in steel.

The President did indeed talk about achieving an international consensus, but he also did indeed say "pending that," that he would support a continuation of the Voluntary Restraint Agreement.

I am simply asking you to reaffirm the assurance that the President gave to Senator Heinz.

Ambassador HILLS. That I can reaffirm.

Senator ROCKEFELLER. That pending that international agreement, you will support a program of continued Voluntary Restraint Agreements.

Ambassador HILLS. Yes. And I think, Senator, that we are all benefited from looking at that policy. I have only been at USTR for 30 days, but there are some countries that have indicated that they would like to drop out of the VRA arrangement. And simply not to look at it, and not to reflect upon the needs of the industry, I think would be deficient.

Now, the President has suggested that an international consensus would be his first choice, and we are looking at what that truly means. What we can do?

You are right, the time is very short. But that doesn't excuse our not looking.

Senator ROCKEFELLER. I understand that. But, again, I understood you also to say "Yes" on the pending matter. I mean, Japan's import penetration, over the years, has been only 4 percent with respect to steel. The European Economic Community averages around 13 percent. These things are not going to get worked out.

The bill needs to be passed and signed by early summer if we are to avoid forcing manufacturers in this country to go abroad to meet their needs because of the lag time in terms of steel orders.

This bill must be passed and signed into law by the President—at the latest, July.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Ambassador Hills, I will be submitting questions to you that will be put into the record by Senator Moynihan.

Ambassador HILLS. Surely.

[The questions can be found in the appendix.]

The CHAIRMAN. Senator Symms?

Senator SYMMS. Thank you very much, Mr. Chairman.

## OPENING STATEMENT OF HON. STEVE SYMMS, A U.S. SENATOR FROM IDAHO

Senator SYMMS. Ambassador, it is nice to have you here this morning.

I just want to ask one general question and then two more specific questions.

With respect to the overall trade deficit, isn't it true that for the last 30 or 40 years our foreign trade barriers against the United States have been pretty much as they are today, and that our trade deficit today is not necessarily related to more barriers overseas but rather to macroeconomic demand aggregately, our demand versus demand from other countries?

In other words, aren't we actually more protected today than we were 30 years ago? Isn't there more protectionism than there was 30 years ago?

Ambassador HILLS. It is a different kind of protectionism. I think that we have reduced tariff barriers quite significantly since the 1940's, but there are other barriers that have taken their place.

But you made an inquiry as to the significance of macroeconomic factors, and there is no question that our trade deficit is far more influenced by the macroeconomic factors than by our trade.

Senator SYMMS. Isn't the lack of demand coupled with low levels of exports also responsible for our trade deficit?

Ambassador HILLS. That, among other things, has surely affected our trade deficit. The gap, frankly, between our savings rate and our spending rate is what accounts for our trade deficit, because we must borrow overseas, and the people lending us dollars must get those dollars from selling us goods. So it is that gap that causes us to have a $130 billion plus trade deficit.

Senator SYMMS. I become concerned when we place so much emphasis on the trade deficit. I keep telling a lot of my friends, "Just wait until the business cycle rears its head again." Additionally, I am concerned with what is happening with U.S. monetary policy. If we continue to experience increased interest rates as well as a slow-down in the economy, we will see the trade deficit come down rather fast. This will be especially true if Americans lose their ability to buy at the same level of the past 5 or 6 years.

This brings me to a more specific question, and that is the long-run outcome of the Super 301 process.

In order to understand the balance of trade, we have to understand the context of capital markets and commercial markets. I worry about who is going to make the Super 301 list. Consider a nation like Taiwan. Taiwan has made a major effort to reduce their trade barriers in the past few years. This nation, much like Japan, has allowed increased access to their markets. Clearly, if the United States penalizes increased liberalization of foreign countries, we will be sending a very negative response. At the same time, there seems to be pressure on this side of the ocean to start erecting new barriers. Do you believe we are going to end up punishing some of the nations which have instituted the greatest trade reforms?

Ambassador HILLS. Well, I hope not. We will go through the process that is required by the law of identifying those countries that have trade barriers, and the practices that have the greatest adverse impact upon our potential to export. That is what we are required to do by law. We will get that report to you in a timely fashion, and we will consult with you in the process of preparing that report. So we will have your input.

Senator SYMMS. Good.

Ambassador HILLS. I can assure you we will seek your advice. I welcome it, and I will welcome consultation on those countries that we deem should be indicated as priority countries.

Senator SYMMS. Thank you very much. I appreciate your concern there.

I want to ask one more specific question. I have written to you about this, and you may or may not have had a chance to review

my letter, but a few weeks ago I learned of a development in the European Parliament that would curtail the ability of U.S. fur exporters to export to European markets due to a labeling question. Specially, there is concern that "these furs have been trapped with foot traps." This seems to me to be yet another beef issue that could become a tremendous irritant to the United States.

Can you tell the committee what has been done so far? Or have you had a chance to get on top of this issue yet?

Ambassador HILLS. Yes, I am aware of the issue, and I did mention it as one of our bilateral areas of concern with the European Delegation when it was here in mid-February.

It is a difficult problem. They have consumers, quite frankly, riled up about the foot traps for animals, and they are looking at it, and we have registered our concern.

Senator SYMMS. Good. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Symms.

Ambassador Hills, we will also have some questions that will be presented to you from Senator Riegle, which we would appreciate your answering and putting in the record.

[The questions from Senator Riegle appear in the appendix.]

The CHAIRMAN. I am committed to handle the nomination of Dr. Sullivan on the floor, and I will have to be leaving now. But I will ask Senator Baucus to complete the hearings.

We are most appreciative of your participation.

Ambassador HILLS. Thank you, Mr. Chairman, and I will be happy to answer any questions.

Senator BAUCUS. Senator Bradley?

Senator BRADLEY. Thank you very much, Mr. Chairman.

Ms. Hills, the trade deficit is a big political problem and a big economic problem. As you look about how you reduce the trade deficit, there are some who say, "Well, the way you reduce is you cut back on imports." There are others who point out that if you had that solution, the result would be a serious downturn in the world economy. Others say we have got to increase exports, and that the key to increasing exports is a vibrant, healthy multilateral trading system.

You would basically agree with the latter point of view, I assume.

Ambassador HILLS. Yes. We would like to have a vibrant trading system.

Senator BRADLEY. And that increasing exports are possible only in a vibrant, healthy international trading system?

Ambassador HILLS. Yes. But let me say that, if you want a cure for the trade deficit, you are going to have to enhance domestic savings. And by that I mean both private and public sector savings.

Senator BRADLEY. Right, like reduce the budget deficit.

Ambassador HILLS. Yes.

Senator BRADLEY. Now, in your statement you talked about the multilateral aspect of this, and you talked abut the bilateral aspect of trying to more exports. You did not talk abut the regional aspect.

My question is: Don't you think that, if a group of like-minded countries, say in the Pacific, got together and actually saw that

they agreed on a number of things in the new Round, that the very fact that they were sitting around a table discussing these issues and coming to some kind of unofficial view that they shared might have a positive effect on Europe and on the new Round?

Ambassador HILLS. Yes. And indeed, we have encouraged countries to sit and discuss their mutual economic challenges. I think Secretary Shultz suggested that countries located in the Pacific Rim, consult amongst themselves.

Senator BRADLEY. Do you see any need for that to continue or to accelerate, that consultation process?

Ambassador HILLS. I think consultation among bilateral partners, amongst regional players, and multilaterally is extremely important. We should talk about opening trade.

Senator BRADLEY. The reason I raised it was that it was absent in your statement, and I know that in your confirmation hearing we had a discussion about it. I was just curious if this didn't represent a change in your view. Do you still believe that regional consultations, particularly in the Pacific, would be enormously important for successful resolution of the Round?

Ambassador HILLS. Talking could be helpful. I wouldn't limit the consultation to any geographic area. We, as a nation, are going to have to talk long and hard with all of the nations. I think that we will all be better off if we can achieve a strengthened GATT. That requires 96 nations to consult. And if we can get some agreement out of that process and harness up mutual interests, even though they may be trade-offs, we will be very much better off.

Senator BRADLEY. Granted. If you can get agreement among 96 nations, that is the optimum. But the question really is how do you get agreement among 96 nations? And the idea of seven or eight or nine Pacific countries essentially seeing common interests in certain issues—I mean, for example, if everybody in the Pacific could agree on agriculture—if—wouldn't that be very powerful leverage in the negotiations?

Ambassador HILLS. Certainly, if those nations agreed to reduce trade-distorting barriers, that would be quite helpful. And in fact we have that. We have the Cairns group, which is not the Pacific Rim but is a group of countries that regularly consult and meet and have a strategy, and that is helpful.

Senator BRADLEY. But the Cairns group doesn't include a number of Pacific countries.

Ambassador HILLS. No. No, I didn't suggest that it was the Pacific Rim. It is a group, though, that is meeting and consulting as a group rather than acting individually.

Senator BRADLEY. But given the prospect of Europe-92, such a Pacific discussion could very well serve a positive function in the new Round, I believe. Don't you?

Ambassador HILLS. I do. I would encourage consultation, and as I said, not discourage any of it. And it is particularly helpful when we can engage in consultations and can draw support for positions that we think take the high road.

Senator BRADLEY. Do you have any plans to sit down with some of the Pacific trade ministers as a group?

Ambassador HILLS. I don't think I have a calendared event, but I am advised that I will be meeting with a large number of ministers from every part of the world, probably within the next 6 months.

Senator BRADLEY. Well, I would encourage you to have a little side breakfast with the Pacific group. That, in and of itself, I think would be helpful.

Ambassador HILLS. Thank you.

Senator BAUCUS. Ambassador Hills, I would just like to do what I can to move us along toward certainly not closure but at least more definite substantial progress in dealing with the trade deficit with Japan.

You mentioned you set up a task force, and interagency task force of some kind. I would like to know, first, when do you expect that task force to conclude its recommendations, and when will we know what you have in mind?

Ambassador HILLS. Well, I will consult with you. I hope to have some idea of, at the lower level, what their recommendation is. I am hoping to get a Cabinet decision on this which will take longer because we will go through, first, the staff group, and then the review group, but in the short term, in the relatively short term, within 90 days.

Senator BAUCUS. So at the end of 90 days, what do you expect that we will have?

Ambassador HILLS. I think, at the very least, a clearer view of how to approach some of the more complicated problems with Japan.

Senator BAUCUS. What is the heart of the problem of the trade deficit with Japan, in your mind? To what degree is it the exchange rate? To what degree is it import barriers? To what degree is it the budget deficit? You know, there has been a lot of talk. I think it would be helpful for us to know how you see it.

Ambassador HILLS. Are you asking what is the principle cause of the trade deficit?

Senator BAUCUS. Yes, and then, therefore, what are the principle remedies?

Ambassador HILLS. The principle cause of the trade deficit, the bilateral trade deficit, is that we save too little and they save too much. That is the principle cause.

The problem that has been troubling you this morning, and some of your colleagues, is a different problem, and that is the vibrancy of our trading, the capacity to export freely, get into markets. The microefficiency of our trading overseas has an impact upon the trade deficit, but it is by no means the overwhelming cause.

Now, we want to correct the trade deficit, because that dislocation has adverse implications over time. We also want to have a free, open trading capacity, where our farmers and our merchants can sell abroad and enter markets and be competitive.

So we really have two purposes here.

Senator BAUCUS. What about the statement I read earlier of the Institute of International Economics, and I think Brookings, saying that Japan imports about 40 percent lower than it should for a developed country? Doesn't that indicate to you that a very large part of the problem is some form of import barriers, even if it is invisible barriers in Japan?

Ambassador HILLS. There are barriers to the markets in Japan. Whether they are import barriers in the narrow sense, or whether they are restrictions on permitting the distribution of foreign goods, there are barriers to open trade in Japan, and we know it.

Senator BAUCUS. It sounds like they are significant.

Ambassador HILLS. Yes.

Senator BAUCUS. Don't you think?

Ambassador HILLS. I believe they are significant.

Senator BAUCUS. I have suggested a macroeconomic agreement with Japan that sets targets on deficit reduction, targets on perhaps a U.S. budget deficit reduction, targets of an increase in Japanese consumption rates, a mutually-negotiated agreement that sets these provisions out, in large part so that we Americans can increase our savings, and so that Japan, in one sense, can decrease its savings rate.

I think that an agreement with Japan, a negotiated agreement with Japan, along these lines would help us reduce our public dissavings, and it could also help us increase our private savings.

It seems to me, at one level, that we need a little push from the outside to do what we know we should be doing—saving more—just as Japan needs a little push from the outside to know what it knows it should be doing: increasing its consumption rate, decreasing its savings rate, increasing its expenditures on infrastructure, for example, or ODA, or Third World Debt Assistance. It needs a little outside pressure to help do that.

I also think that a mutually-negotiated agreement with Japan along the lines I am talking about will further help us set our priorities.

We Americans can't be all things to all people, including ourselves, at all times. It is an impossibility. We have to set some priorities, just as you in your office, I in mine, each of us in our lives, our individual personal lives, has to set some priorities.

I think it is important for us Americans to begin to address priorities a little more. I am not talking about the ugly connotations of "managed trade." I am only talking about setting priorities. If we in good faith and Japan in good faith enter into negotiations, mutually agree to negotiations, trying to set some targets of some kind to allow those countries to reach those targets in the ways that each country wants, but set some targets, that will help both sides set priorities—certainly we need to set priorities more than does Japan—and it also would help us do what we know we should be doing, because the other will be helping us do it.

I would like you to think very strongly about that, because I have given a lot of thought to this, frankly. I think that if we move along these lines it will help us open markets, it will help us to have freer trade, it will help us to reduce the trade deficit, and is the best way to do it.

Ambassador HILLS. I appreciate your thoughts, and we will be happy to consult with you as we are developing the strategy.

Senator BAUCUS. Thank you.

The hearing is concluded.

[Whereupon, at 12:02 p.m., the hearing was concluded.]

# APPENDIX

## Alphabetical Listing and Material Submitted

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### Prepared Statement of Senator Lloyd Bentsen

This is the first in a series of hearings we plan to have to monitor implementation of the Trade Act of 1988.

We will be scheduling these hearings well in advance. Quite frankly, our purpose is to make sure that the Administration is aware that their actions on trade will be scrutinized.

The Ways and Means Committee and other Committees of the Congress have also scheduled oversight hearings. The Members of this Committee and other Committees invested an incredible amount of time and effort in the enactment of the Trade Act. I for one do not want to see that time and effort wasted by a failure of implementation.

I want to point out to Members of this Committee that a number of other countries are out to kill this bill before Ambassador Hills even has a chance to employ it. Countries that as a matter of policy allow the theft of intellectual property; that run protectionist trade regimes; that are fighting to keep services and investment out of the multilateral trade negotiations—are trying to label this bill as "unilateralist."

Now, I know of no one associated with the enactment of this bill in this Committee, or the rest of the Senate or the House, or the business community, or organized labor, or the Reagan Administration who wants to use this new law to steal foreign patents, to close the American market, or to make the General Agreement on Tariffs and Trade (GATT) any weaker than it already is. You know, the GATT only applies to about seven percent of world trade as it stands today.

This Committee wants our new law to be used to improve intellectual property protection; to open up world trade; to expand the role of the GATT; and to expand world trade.

Quite frankly, I am surprised that our trading partners are trying to destroy this bill. I would have thought they would want the President to be authorized to negotiate the expansion of the GATT; I would have thought they have as much at stake as we have in protecting intellectual property and improving agricultural trading rules, in protecting the basic rights of workers and in preventing currency manipulation.

The United States should be willing to stand up for these principles. They serve the interests of all countries. But they also serve vital national interests of this country. And I think our Government should stand up for our vital national interests around the world.

Now, we have moved with these oversight hearings very early. There is a reason for that.

This trade problem is probably the single most important problem facing the United States today. And if there is one thing we ought to have learned in the last eight years, it is that there is no silver bullet, no panacea, for the trade problem; it is complicated, and we need to move forward on many fronts.

As a result, the Trade Act places many requirements on the Administration, each of them relating to different aspects of this complicated problem, the trade deficit.

Today, March 1, is the deadline for Administration reports on the operation of the trade agreements program, the national trade policy agenda, and the projection of trade data. Several deadlines fell last fall, and several more came due earlier this year. Some of these deadlines have not been met.

In some cases, quite frankly, I think a delay of a few days has produced a better document, or focused a little more thought on the problem, such as delay in required responses on the problem of developing country debt.

But when I hear objections raised to the idea of deadlines, I recall how many years went by without a trade policy. I recall how long the Members of this Committee worked on the Trade Act.

Deadlines and lists can produce results, especially if they are used with a sense of purpose. Congress cannot administer the Trade Act, and we cannot negotiate with foreign Governments. But we can insist that the spirit and the letter of the law be carried out, and we must be consulted on the direction of our trade policy.

Deadlines give us, as well as the Administration, the tools for formulating and carrying out a trade policy.

I recognize that the Trade Act does not give Ambassador Hills much time; she has only been confirmed four weeks.

However, I have very little patience with complaints that there is not enough time to act on these matters. The Trade Act has been the law of the land for more than six months; most of the important provisions of the Trade Act have been well known for a year or more.

The trade deficit is once again on the increase. Each month we fail to set forth a trade policy is one more month in which we incur an increasing debt. That debt is like a tax on our future.

So what we want to do today is look at the implementation of the Act so far, and to ask some questions about how it will be implemented in the next few months.

Now, Ambassador Hills has been forthcoming with the Committee on these matters. We had a frank exchange of views in private with her last week. I know from my conversations with her that she wants to make this law work and expand the world trading system. We want to be helpful in that regard.

Ambassador Hills, we appreciate very much your willingness to be with us today.

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PREPARED STATEMENT OF CARLA ANDERSON HILLS

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to discuss implementation of the Omnibus Trade and Competitiveness Act of 1988. My testimony today places particular emphasis on our national trade policy agenda for the coming year, which the 1988 Act requires the President to submit to the Congress by March 1. In preparing this agenda, we sought the advice of the Congress, the other executive agencies, and our private sector advisory committees. We will need a cooperative effort among Congress, the Administration and the private sector in developing and implementing a national agenda that promotes the welfare of the American people and our own competitiveness.

There is no question we face huge challenges in our trade policy. The global trade deficit, while down from its record highs, remains too high. The multilateral trading system is woefully in need of modernization: key areas of economic activity are covered inadequately or not at all. Too many countries maintain closed markets.

Our trade policy by itself can't solve all these problems. Much of the deficit stems from macro-economic factors. Knocking down foreign trade barriers will give us export opportunities, but we have to ensure that our products and services are competitive in order to capitalize on these opportunities. This will require us to manage our education, technology, defense, fiscal and monetary policies in a way that reinforces positively our trade policy.

This Administration recognizes, however, that effective and careful implementation of the new trade act is an essential component of our agenda to build a better America. The trade act seeks to promote important objectives: strengthening international trade rules through a broad grant of trade negotiating authority; promoting market access for competitive industries through the use of new procedures and new remedies; integrating trade policies with broader economic policy initiatives in order to facilitate positive adjustment by U.S. industries; and better policy coordination throughout the government in order to assure maximum attention to America's trade objectives in this new era of global competition.

Our trade policy agenda speaks to these objectives. But setting forth our objectives is only the first step. In order to bring them to fruition we must make creative use of the range of tools provided in the omnibus trade law, and we must use all of the rights and opportunities that accrue to us under international agreements to which the United States is a party. Our strategic goal is to open markets, not close them; to create an ever-expanding international trading system based on *equitable* and *enforceable* rules.

Let me focus briefly on two key elements involved in implementing the Trade Act: effective negotiation of multilateral trade agreements; and vigorous use of Section 301 and related provisions to expand market access bilaterally.

MULTILATERAL TRADE AGREEMENTS—THE URUGUAY ROUND

The Uruguay Round is clearly a top priority on our trade agenda this year. The Administration's general objectives in these negotiations are drawn from the 1988 Act, and are familiar to this Committee. They include:

—to achieve multilateral *agricultural policy reform;*

—to expand and strengthen the GATT by adding disciplines on new issues such as *intellectual property,* trade-related *investment,* and *services,* which are so important to our economy;

—to reduce foreign barriers to U.S. exports of goods and services; and,

—to strengthen and reinforce the credibility of the trading system by addressing the growing problems of integrating *developing countries* into the trading system, *subsidies,* and improving the rules on safeguards, or *import relief* from fairly traded goods.

I intend to push our objectives vigorously in the face of what I expect will be some tough bargaining from other countries.

Much groundwork to begin substantive negotiations has been done. Last December's ministerial meeting at Montreal resulted in agreements on how to proceed in 11 of the 15 Uruguay Round negotiating groups. Those agreements met most of our objectives for the areas addressed. In particular, we made important progress on:

• *Services.* The Mid-term Review results will accelerate the negotiation of a multilateral agreement on trade in services. This breaks a procedural logjam on how to begin negotiating sectoral coverage of a framework agreement. Key issues for negotiation are identified, including national treatment, transparency, non discrimination/MFN, and market access, including establishment. 1989 will be a pivotal year for services negotiations—work will intensify in order to reach agreement on a first draft of an agreement by the end of the year.

• *Institutional machinery.* The functioning of the GATT was strengthened by some procedural improvements in the dispute settlement mechanism and by agreeing to enhanced surveillance of trade policies of all contracting parties. A first step was taken toward better cooperation between the GATT and international financial institutions—by calling for a report on the subject prior to the conclusion of the negotiations.

• *Market access.* We agreed to a negotiating framework that enables us to negotiate market access using a request/offer method. This will afford a more integrated approach, to assure that once a tariff is reduced, a non-tariff barrier does not hinder our exports.

Our immediate task, however, is to resolve the negotiating frameworks left open at Montreal: *agriculture, intellectual property, safeguards* and *textiles.* In Montreal, it was agreed these issues should be resolved by April 5, when the Trade Negotiations Committee that supervises the negotiations will meet again in Geneva. Let me just outline the basic issues.

• The United States *sought* and *seeks* agreement in agriculture on a negotiating framework that will lead to fundamental reform—by dismantling trade-distorting subsidies and protection.

• Because others in Montreal, particularly the EC, were not yet prepared to accept a framework that would lead us in this direction, and because we were unwilling to accept less, we agreed to give ourselves another few months to reach agreement.

• The United States, along with a number of supporters, fought for a negotiating framework for a *comprehensive GATT agreement on trade-related intellectual property.* We rejected suggestions that we settle for fuzzy, ambiguous solutions that would only serve to confuse these already complex negotiations.

• An ever increasing number of other countries share our goal of an intellectual property agreement that *will* include obligations on substantive standards; *will* include obligations on enforcement—internally and at the border; *will* include provisions on national treatment and transparency, appropriately revised for intellectual property; and *will* include dispute settlement provisions.

• The other two outstanding issues from Montreal are not easy subjects: *textiles* and *safeguards.* Our target for April is to agree on the framework for the negotiations in the remainder of the Uruguay Round. While I expect the post-April negotiations to be arduous and challenging, I believe we will be able to agree to a negotiating framework in these two areas that doesn't prejudge the issues and the negotiations in the next 18 months.

The frameworks agreed to in Montreal are "on hold" pending agreement on the four non-agreed areas. While there have been no "formal" meetings of the negotiating groups in Geneva, all delegations agreed to abide by the deadlines in those Montreal frameworks. This is based on the assumption that we will resolve the differences in the four outstanding issues.

In addition, GATT Director General Dunkel has been working in Geneva with delegations to break the impasse in these four remaining areas. The process since Montreal in Geneva has moved forward in a constructive atmosphere but it is too early to assess the results. Obviously, a key difficulty is the continuing difference between the United States and the EC on agriculture.

When Secretary Yeutter and I met with our counterparts from the EC two weeks ago, we talked about agriculture and the Uruguay Round. The discussion was useful—but we still have not been able to agree on the direction and destination of long-term multilateral reform in agriculture. We did agree that the stakes are too high and the Uruguay Round too important to let the Uruguay Round languish. Secretary Yeutter and I will travel to Brussels to resume these discussions on March 10 with our EC counterparts.

In the meantime, there will continue to be preparatory working level meetings. By the end of March 1 will have met or talked with most of the key players in the agriculture talks. I am not prepared to sacrifice fundamental substantive interests for the sake of allowing the Round to proceed. However, I believe there is so much determination by almost all countries to succeed that we will find a solution to the outstanding issues that will enable the round to go forward without having to give up on our fundamental objectives.

Domestically, we are meeting with our advisors to develop and refine our positions, and review proposals from other countries. Meetings are ongoing at all levels within the Executive Branch. My staff has been consulting regularly with Congressional staff so that all of us will be ready to hit the ground running in the negotiations once April is behind us.

### BILATERAL INITIATIVES

This Administration is committed to lowering barriers to the export of U.S. goods and services. Beyond our multilateral efforts in the Uruguay Round we will pursue vigorously and responsibly the elimination of barriers by our trading partners through bilateral consultations and negotiations. These efforts will include negotiation of bilateral agreements to remove formal and informal barriers to the export of U.S. goods and services in key overseas markets. I would like to highlight for the Committee three of our most important bilateral concerns for the coming year: the implementation of our recent free trade agreements, EC 1992, and Japan.

—Free-trade agreements. We will continue to implement effectively our free trade agreements with Canada and Israel, which reflect the special economic, trade and other relationships that the United States enjoys with those two countries.

Last month I accompanied President Bush to Ottawa where I had a good discussion with Minister Crosbie of the major issues on our bilateral agenda with Canada. Clearly, implementation of the Free Trade Agreement is our first priority with Canada. Minister Crosbie and I agreed to have the first meeting of the Trade Commission, which we head, on March 13. While we have a number of start-up issues to resolve in implementing this new Agreement, I believe we're off to a good start.

In addition to substantially liberalizing trade between the United States and Canada, the Free-Trade Agreement with Canada creates an important new institutional framework for resolution of disputes and for further negotiations on remaining bilateral trade issues. We intend to utilize these avenues opened by the FTA, in close consultation with the Congress and the private sector.

As for the U.S./Israel agreement, while we have had a series of implementation problems since 1985, we have been able to negotiate a satisfactory resolution to most of them. We will continue to work to ensure that this agreement is successfully implemented.

—*European Community—1992.* Another priority issue we're pursuing on the bilateral front is the "EC 1992" initiative. The European Community's push to complete the EC internal market by 1992 offers the prospect of significant new commercial opportunities for U.S. business in the Community if implemented in a non-discriminatory way.

However, in a number of areas, proposals to foster European integration could potentially prejudice legitimate American economic interests in the EC. To guard against these possible negative consequences, we will monitor closely initiatives in

the Community and develop effective policy responses to those EC measures which unfairly discriminate against U.S. exporters or investors. In this exercise, the U.S. Government will have at its disposal the full range of U.S. trade policy instruments.

—*Japan.* The enormous bilateral deficit in our trade with Japan is clearly a cause for concern. The Reagan Administration made progress in securing agreements with Japan to reduce formal trade barriers, but clearly much more is needed. I don't have easy answers, but I do believe the time is past for papered-over solutions that somehow never produce results. Last month I received an important report from the Japan Task Force of our private sector Advisory Committee for Trade Policy and Negotiations. The report provides an economic analysis of our trading relationship with Japan, and makes recommendations for improving that relationship. This report, which we are reviewing very carefully, comes at an important time when we are assessing our trade policy with all of our major trading partners in light of the 1988 Trade Act. I have requested the Trade Policy Review Group to review our trade policy with respect to Japan, based on this report and on consultations with our advisors regarding our other trading partners in the Pacific.

### IMPLEMENTATION OF SECTION 301 AND RELATED PROVISIONS

Let me now focus on a matter that I know is of great interest to this Committee—the new market access provisions of the '88 Act. I will be consulting with you as we develop our priorities for negotiations in the "Super 301" process, and the special 301 exercise for protection of intellectual property rights. We also will continue to pursue vigorously those investigations on our current 301 agenda—both self-initiated and resulting from petitions from private parties.

• *"Super 301."* I view the Super 301 process as an excellent opportunity for us to determine where to concentrate our efforts over the next two years, and where to use section 301 in as effective a manner as possible. We are currently quantifying the benefits of eliminating various foreign trade barriers in order to select priorities; our focus will be on areas where we have the *greatest export potential.*

The quantification process is not an easy one, but we've marshalled the expertise of other agencies, and our private sector advisors, to accomplish this task. The interagency Section 301 Committee is beginning the necessary analysis of these trade barriers, and we will consult closely with you as we approach the task of preparing a final priorities list in May.

• *"Special 301."* I strongly support the high priority the Congress, the Reagan Administration, and the private sector attached to improving intellectual property protection. Self-initiated section 301 cases can be an effective means of gaining improved protection and enforcement of intellectual property rights. Section 301 cannot be our only tool, however, and we will continue to pursue on parallel tracks our bilateral efforts and multilateral negotiations in the Uruguay Round.

• *Telecommunications.* We will also be pursuing market opening initiatives in telecommunications, as required by the new law. I recently submitted a report to you on this subject, and we will need to consult further with you as the negotiations unfold. I intend to pursue these negotiations vigorously. It is my belief that proper use of the authority granted to us in this area can result in more equitable access for U.S. exporters of telecommunications products.

• *Regular 301 Agenda.* At present we have a dozen active 301 cases on the agenda. In some cases, we are still pursuing GATT dispute settlement; in others we are engaged in bilateral consultations; and in some we are continuing to monitor the results of a settlement agreement or of responsive action taken under section 301. In all these cases, it is my intention to use the leverage of section 301 to bring down foreign unfair practices. I would be happy to respond to your questions about particular cases. I have provided you with an updated Table of Cases that reflects their current status, and soon I will be submitting the semiannual section 301 report covering the second half of 1988.

### COORDINATING THE VARIOUS ELEMENTS OF OUR AGENDA

In these remarks and in our written report, I have discussed under separate headings a number of issues. It is appropriate to add here a few comments on the need to coordinate our policies and actions to reinforce one another to the maximum extent possible. For example, the tools provided in section 301 can and should provide important leverage in pursuing our Uruguay Round objectives. Our goal in the Uruguay Round is not agreements for their own sake, but rather to open foreign markets and to enhance economic benefits for the United States.

Policy coordination will not always be easy; there will be tough choices. The broad choice, in the terms used at my confirmation hearing, is when to use the crowbar and when the handshake. We cannot fall into the trap of suspending all actions against unfair trade practices on the ground that such actions "spoil the atmosphere" for the Uruguay Round. On the other hand, we won't achieve our objective of opening markets just by bludgeoning other countries with our own market-closing actions.

We have to accept that there will frequently be trade-offs in the choices we make. That means our decision-making process should include careful weighing of the options and consideration of the advice we get from Congress and the private sector. But we cannot shrink from decisions because they entail some costs.

A concrete example is the recent dispute concerning Brazil's refusal to provide patent protection for pharmaceuticals and fine chemicals. After years of trying to resolve this issue bilaterally, we concluded that we would have to take countermeasures under section 301. The question then arose what action to take. After careful consideration, we determined that action in the area of intellectual property simply would not afford effective leverage with respect to Brazil. We decided that the most effective step would involve restrictions on merchandise imports from Brazil.

Now Brazil has challenged our retaliatory actions in the GATT, contending they are inconsistent with U.S. obligations under the GATT. We have responded that Brazil's charges against us ignore the fundamental problem in the case: lack of patent protection by Brazil for the pharmaceutical and chemical sector, and the absence of effective international rules, and an international dispute settlement mechanism, to protect against such unfair trade practices. We have also indicated that we cannot nor do we intend to terminate retaliation without provision by Brazil of product patent protection for pharmaceuticals and fine chemicals. Finally, we have told Brazil and other GATT contracting parties, many of whom are sympathetic with Brazil's position, that there should be no illusion that a GATT panel can help resolve this matter simply by examining Brazil's contentions under existing GATT rules in this case. We have put the world on notice in this case that we will not rule out trade-restrictive measures that may be necessary to respond to the theft of U.S. intellectual property.

I strongly believe we have taken the right course in this case. Would we have preferred to have no GATT confrontation? Of course. Our first preference is elimination of unfair practices by agreement. Where that is not possible, I think we should try to find leverage that is effective and does not embroil us in GATT disputes. But if no other effective recourse is feasible, we have to be ready to act in defense of principle, and to stand by our actions in the face of flagrantly unfair actions, even if our own actions draw fire in the GATT.

## CONCLUSION

A national trade policy agenda cannot be developed in isolation from global developments in the international trading system. Our agenda for the coming year is likely to influence—and be influenced by—macroeconomic policies, international cooperation, and the growing interdependence in international trade.

While the Administration's objectives have been determined through collaboration with the Congress and private sector, achievement of those objectives will require cooperation as well from our trading partners. Although we have a basis for such cooperation, maintaining such cooperation will require creative use of the legal tools provided us under U.S. trade law.

Office of the United States Trade Representative
Section 301 Table of Cases
February 27, 1989



| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| Guatemala Cargo Preference (301-1) | Delta Steamship Lines, Inc. filed a petition on July 1, 1975, alleging that Guatemala's requirement "mandating certain cargo to Guatemala or associated line carriers" constituted a discriminatory shipping practice (40 FR 29134). | STR completed public hearings on Sept. 26, 1975. Following bilateral negotiations between petitioner and National Shipping Line of Guatemala, petitioner withdrew the petition. STR terminated the investigation on June 29, 1976 (41 FR 26758). |
| Canada Egg Quota (301-2) | United Egg Producers and American Farm Bureau Federation filed petitions on July 17 and 21, 1975, alleging that a Canadian quota on the importation of US eggs constituted an unfair trade practice (40 FR 33749). | As a result of bilateral negotiations, Canada approximately doubled its quota for imports of US eggs. STR terminated the investigation on March 14, 1976 (41 FR 9430). |
| EC Supplementary Levies on Egg Imports (301-3) | Seymour Foods, Inc. filed a petition on Aug. 7, 1975, alleging that changes in the EC's supplementary levies on imports of egg albumin impaired the ability of US exporters to contract for sales in the EC (40 FR 34649). | Following informal consultations, supplementary levies were replaced with increased import charges. However, since US exports of egg albumin steadily increased, the Section 301 Committee determined that no further action was necessary. STR terminated the investigation on July 21, 1980 (45 FR 48758). |
| EC Minimum Import Price & License/Surety Deposit Systems on Canned Fruits, Juices and Vegetables (301-4) | The National Canners Association filed a petition on Sept. 22, 1975, alleging that the EC's minimum import prices and an import license/surety deposit system with respect to canned fruits, juices and vegetables constituted an unfair trade practice (40 FR 44635). | STR initiated an investigation and held public hearings on Nov. 17, 1975. Consultations under GATT Art. XXIII:1(c) were held March 29, 1976. A GATT panel was appointed under Art. XXIII:2. As a result of the panel's report, the EC discontinued use of minimum import price mechanism. STR terminated the investigation on Jan. 5, 1979 (44 FR 1504). |
| EC Subsidies of Malt Exports (301-5) | Great Western Malting Company filed a petition on Nov. 13, 1975, alleging EC subsidies on malt to third countries (40 FR 54311). | In 1976, the EC reduced the subsidy. STR terminated the investigation on the advice of the Section 301 Committee and with petitioner's agreement on June 19, 1980 (FR 41558). |

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| EC Export Subsidies on Wheat Flour (301-6) | Millers' National Federation filed a petition on Dec. 1, 1975, alleging violation by the EC of GATT Art. XVI:3 in using export subsidies to gain more than an equitable share of world export trade in wheat flour (40 FR 57249). | STR initiated an investigation on Dec. 8, 1975. Consultations under GATT Art. XXII:1 were held in 1977 and 1980, and technical discussions followed in 1981. On Aug. 1, 1980, the President directed USTR to pursue dispute settlement (45 FR 51169). The Subsidies Code dispute settlement process was initiated on Sept. 29, 1981. The Subsidies Code panel (established on Jan. 22, 1982) issued its conclusions on Feb. 24, 1983. The Code Committee considered the panel report on April 22, May 19, June 10, and Nov. 17, 1983. The issues raised by the panel report are the subject of Uruguay Round negotiations. |
| EC Variable Levy on Sugar Added to Canned Fruits and Juices (301-7) | The National Canners Association filed a petition on March 30, 1976, alleging that sudden changes in the variable levy assessed on sugars added to canned fruits and juices by the EC constitute unjustifiable and unreasonable import restrictions and impair the value of GATT-bound tariff rates to the US (41 FR 15384). | Following consultations during the MTN, the parties reached an agreement on July 11, 1979, which changed the variable levy to a fixed 2% levy on sugar added. USTR terminated the investigation with the advice of the Section 301 Committee and petitioner's agreement on June 18, 1980 (45 FR 41254). |
| EC Livestock Feed Mixing Requirement (301-8) | The National Soybean Processors Association and the American Soybean Association filed a petition on March 30, 1976, alleging that the EC's requirement that livestock feed be mixed with domestic nonfat milk constituted an unfair trade practice since it displaced other protein sources such as soybeans and cake imported primarily from the US (41 FR 15384). | STR initiated an investigation, and held a public hearing on June 22, 1976. The GATT panel appointed under Art. XXIII:2 met in February and March 1977. In the interim, the EC terminated its system. STR terminated the investigation on Jan 5, 1979 (44 FR 1504). |
| Republic of China Tariffs on Major Home Appliances (301-9) | Charles C. Rehfeldt, Executive Vice-President of Lai Fu Trading Co., Ltd., filed a petition on March 15, 1976, alleging unfair trade practices by the Republic of China, in the form of confiscatory tariff levels on imports of major home appliances (41 FR 15452). | STR held public hearings on May 18, 1976. The Republic of China reduced subject duties. STR terminated the investigation on Dec. 1, 1977 (42 FR 61103). |

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Office of the United States Trade Representative
Section 301 Table of Cases
February 27, 1989

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| EC and Japan Diversion of Steel to US (301-10) | The American Iron and Steel Institute filed a petition on Oct. 6, 1976, alleging that the EC and Japan had engaged in an unfair trade practice by agreeing to divert significant quantities of Japanese steel exports to the US (41 FR 45628). | STR held public hearings on Dec. 9, 1976. STR terminated the investigation on Jan. 30, 1978, on the ground that there was not sufficient justification to the claim that the EC-Japan agreement created an unfair burden on the US (43 FR 3962). |

USTR COMPUTER GROUP

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| EC Citrus Tariff-Preferences for Certain Mediterranean Countries (301-11) | Florida Citrus Commission et al. filed petitions on Nov. 12, 1976, alleging that the EC's preferential tariffs on orange and grapefruit juices and fresh citrus fruits from certain Mediter- ranean countries have an adverse effect on US citrus exports to the EC (41 FR 52567). | STR initiated an investigation on Nov. 30, 1976, and held public hearings on Jan. 25, 1977. During the MTN, the US obtained duty reductions on fresh grapefruit only. GATT Art. XXII:1 consultations were held in October 1980, followed by informal discussions. Formal consultations under GATT Art. XXIII:1 were held April 20, 1982. Conciliation efforts in September 1982 failed. On Nov. 2, 1982, the GATT Council agreed to establish a panel. The panel composition and terms of reference of the panel took some months to resolve. The panel met on Oct. 31 and Nov. 29, 1983, and Feb. 13 and Mar. 12, 1984. The factual portion of the panel report was submitted to the parties on Sept. 27. The full report was submitted on Dec. 14, 1984. The GATT Council considered the panel's findings and recommendations on March 12 and April 30, 1985, but the EC blocked any action. On April 30, the US considered the dispute settlement concluded. On May 10 USTR held a public hearing on the substance of our recommendations to the President (50 FR 15266). USTR transmitted his recommendation on May 30, and on June 20 the President determined that the EC practices deny benefits to the US arising under the GATT, are unreasonable and discriminatory, and constitute a burden on US commerce (50 FR 26143).<br><br>Effective July 6, the President imposed a 40% ad valorem duty on pasta products not containing egg and a 25% ad valorem duty on pasta products containing egg (50 FR 26143). The EC reacted by raising duties on lemons and walnuts imported from the U.S., effective July 8. |

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| | | On July 19, USTR announced that in return for the US suspension of increased duties on imported pasta, the EC would drop its proposed duty increases, reduce EC pasta export subsidies by 45%, and take steps to increase access to the EC market for US citrus exports by Oct. 31. Because the EC did not increase our access to its citrus market by Oct. 31 as promised, the US imposed the substantially higher duties on pasta imported from the EC on Nov. 1. The EC then counter-retaliated and imposed higher duties on lemons and walnuts imported from the U.S.<br><br>On August 10, 1986, the US and EC reached an agreement that resolved this case. The US obtained tariff concessions from the EC on citrus products. In addition, the agreement provides for EC tariff concessions on almonds and peanuts, in return for certain US tariff reductions.<br><br>After negotiating this agreement, both the US and EC terminated their retaliatory duties (51 FR 30146). Subsequently the US increased the EC cheese quota (52 FR 8439) and the EC lowered its tariffs on some products. Authority to reduce US tariffs is included in the Omnibus Trade and Competitiveness Act of 1988, and was implemented by Presidential Proclamation on December 21, 1988.<br><br>Finally, the US and EC agreed to negotiate a prompt settlement to the pasta dispute (see Docket No. 301-25). |
| Brazil, Korea and PRC Thrown Silk Agreements with Japan (301-12) | George F. Fisher, Inc. filed a petition on Feb. 14, 1977, alleging that Japanese agreements with Brazil, Korea and the PRC permitting imports of thrown silk effectively prevented the entry of such imports from the United States, and that this constituted discriminatory conduct (40 FR 11935). | STR held a public hearing on March 29, 1977. Following the failure of accelerated discussions with Japan, the US filed a complaint under GATT XXIII:2. A dispute settlement panel heard the case in the fall, 1977. Before the GATT panel issued its report, Japan adjusted the restrictions. STR terminated the investigation on March 3, 1978 (43 FR 8876). |

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| Japan Leather (301-13) | The Tanners Council of America filed a petition on Aug. 4, 1977, alleging violation by Japan of GATT Art. XI in imposing quantitative restrictions on imports of leather from the U.S., and excessively high tariffs (42 FR 42413). | STR initiated an investigation on Aug. 23, 1977. The US consulted with Japan under GATT Art. XXIII:1 in January 1979, which resulted in an understanding to expand the quota on imported leather. In light of this understanding, the President decided not to take retaliatory action; however, on Aug. 1, 1980 (45 FR 51171), he directed USTR to monitor implementation of the understanding.<br><br>Since the results of the 1979-82 bilateral leather understanding were unsatisfactory, USTR pursued GATT dispute settlement. The US and Japan consulted under GATT Art. XXIII:1 on Jan. 27-28, March 30 and April 12, 1983. A dispute settlement panel under GATT Art. XXIII:2 was authorized on April 20, 1983. That panel heard the case in the fall and winter of 1983-84. In February 1984, the panel found that Japan's leather quotas violated GATT Art. XI and caused nullification or impairment of US GATT benefits. The GATT Council adopted the panel report on May 16, 1984. The US rejected as inadequate Japan's mid-1985 proposal to replace the quota by a high tariff.<br><br>On Sept. 7, 1985, the President directed USTR to recommend retaliation unless the leather and leather footwear restrictions were satisfactorily resolved by Dec. 1. (See also Docket No. 301-36.)<br><br>In December 1985 Japan agreed to provide about $236 million in compensation through reduced (or bound) Japanese tariffs. The US raised tariffs on an estimated $24 million in imports of leather and leather goods from Japan, effective March 31, 1986 (51 FR 9435). |

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| USSR Marine Insurance (301-14) | The American Institute of Marine Underwriters filed a petition on Nov. 10, 1977, alleging that the USSR unreasonably required that marine insurance on all trade between the US and the USSR be placed with a Soviet state insurance monopoly (43 FR 3635). | In June 1978, the President determined that the Soviet practice is unreasonable (43 FR 25212). On July 12, 1979, USTR suspended the investigation pending review of the operation of the U.S.-Soviet agreement (44 FR 40744). The suspension remains in effect (45 FR 49428). |
| Canada Border Broadcasting (301-15) | Certain US television licensees filed a petition on Aug. 29, 1978, alleging that certain provisions of the Canadian Income Tax Act were unreasonable in denying tax deductions to any Canadian taxpayer for advertising time purchased from a U.S. broadcaster for advertising aimed at the Canadian market, when deductions were granted for the purchase of advertising time from a Canadian broadcaster (43 FR 39610). | STR held public hearings in November 1978 and July 1980. The President determined on Aug. 1, 1980, that the most appropriate response was legislation to mirror in US law the Canadian practice (45 FR 51173). That proposal was sent to Congress on Sept. 9, 1980, and again in November 1981. Legislation was enacted on Oct. 30, 1984. Trade and Tariff Act of 1984, Sec. 232, Pub. L. No. 98-573. |
| EC Wheat Export Subsidies (301-16) | Great Plains Wheat, Inc. filed a petition on Nov. 2, 1978, alleging that EC export subsidies were enabling exports of wheat from the EC to displace US exports in third country markets (43 FR 59935). | STR held public hearings in February 1979, and consulted with the EC in July 1979. Both parties agreed to monitor developments in the wheat trade, exchange information, and consult further to address any problems that might arise. USTR terminated the investigation on Aug. 1, 1980 (45 FR 49428). |
| Japan Cigars (301-17) | The Cigar Association of America, Inc. filed a petition on March 14, 1979, alleging that Japan imposes unreasonable import restrictions, internal taxes or charges on imports in excess of those placed on domestic products, and discriminatory restrictions on the marketing, advertising, and distribution of imported cigars (44 FR 19083). | During panel deliberations under GATT Art. XXIII:2 in March 1980, Japan repealed its internal tax on imported cigars and applied an import duty of 60% ad valorem. Prior to completion of panel action, the US and Japan reached agreement that liberalized market restrictions and reduced the import duty. USTR terminated the investigation on Jan. 6, 1981 (46 FR 1389). GATT proceedings terminated in April 1981. |



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| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| Argentina Marine Insurance (301-18) | The American Institute of Marine Underwriters filed a petition on May 25, 1979, alleging that Argentina's requirement that marine insurance on trade with Argentina be placed with an Argentine insurance firm is unreasonable and burdens US commerce (44 FR 32057). | STR initiated an investigation on July 2, 1979, and held a public hearing on Aug. 29, 1979. Upon Argentina's commitment to participate in multilateral negotiations, a goal of which was the elimination of restrictive practices in the insurance sector, USTR suspended the investigation on July 25, 1980 (45 FR 49732). |
| Japan Pipe Tobacco (301-19) | The Associated Tobacco Manufacturers filed a petition on Oct. 22, 1979, alleging that Japan set unreasonable prices for imported pipe tobacco and restricted its distribution and advertising (44 FR 64938). | In November 1979, USTR consolidated this case with 301-17 alleging identical practices with respect to cigars. USTR terminated the investigation on Jan. 6, 1981 (46 FR 1388). |
| Korea Insurance (301-20) | The American Home Assurance Company filed a petition on Nov. 5, 1979, alleging that the Republic of Korea was discriminating against petitioner by failing to issue a license permitting petitioner to write insurance policies covering marine risks; not permitting petitioner to participate in joint venture fire insurance; and failing to grant retrocessions from Korea Reinsurance Corp. to petitioner on the same basis as Korean insurance firms (44 FR 75246). | On Dec. 19, 1979, USTR initiated an investigation. On Nov. 26, 1980, USTR invited public comments on, inter alia, proposals for retaliation (45 FR 78850). Beginning in June 1980, several rounds of consultations were held, resulting in Korea's commitment to promote more open competition in the insurance market. Upon withdrawal of the petition on Dec. 19, USTR terminated the investigation on Dec. 29, 1980 (45 FR 85539). See Docket No. 301-51. |
| Switzerland Eyeglass Frames (301-21) | Universal Optical Co., Inc. filed a petition on Dec. 6, 1979, alleging that the Swiss Customs Service engaged in unreasonable practices by requiring an assay to be done to determine the gold content of the trim in eyeglass frame examples before their importation (45 FR 7654). | Petitioner withdrew its petition on Nov. 10, 1980. USTR terminated the investigation on Dec. 11, 1980 (45 FR 81703). |

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| EC Sugar Export Subsidies (301-22) | Great Western Sugar Company filed a petition on Aug. 20, 1981, alleging EC violation of GATT Art. XVI and the Subsidies Code in using export subsidies to obtain more than an equitable share of world export trade in sugar (46 FR 49697). | USTR initiated an investigation on Oct. 5, 1981, and held a public hearing on Nov. 4, 1981. The US consulted with the EC under Art. 12:3 of Subsidies Code on Feb. 16, 1982. The conciliation phase was completed by April 30, 1982. USTR submitted a recommendation to the President on June 7, 1982. On June 28, 1982, the President directed USTR to continue international efforts to eliminate or reduce EC subsidies (47 FR 28361).<br><br>On July 29, 1987 the petitioners requested that the investigation be reactivated. USTR denied their request; agricultural export subsidies are being addressed in the Uruguay Round negotiations. |
| EC Poultry Export Subsidies (301-23) | The National Broiler Council filed a petition on Sept. 17, 1981, alleging EC violation of GATT Art. XVI and the Subsidies Code in using export subsidies that displace US poultry exports to third country markets (46 FR 54831). | USTR initiated an investigation on Oct. 28, 1981. Consultations with the EC under Art. 12:3 of the Subsidies Code were held Feb. 16, 1982. On June 11, the US submitted requests for information under Art 17 of the Code to the EC and Brazil. USTR submitted a recommendation to the President on June 28, 1982. On July 12, the President directed expeditious examination of Brazilian subsidies (47 FR 30699). The US informally consulted with Brazil on Aug. 30, 1982, and additionally consulted with the EC on Oct. 7, 1982. Formal Art. 12 consultations with Brazil were held April 1, 1983, and the US met again with the EC and Brazil on June 23. Since these consultations did not resolve the problem, the US requested conciliation. The Subsidies Code Committee held the first conciliation meeting on Nov. 18, 1983. Conciliation continued on April 4, May 4, June 20, and Oct. 16, 1984. No further action has taken place in the Subsidies Code Committee; agricultural export subsidies are being addressed in the Uruguay Round negotiations. |

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| Argentina Hides (301-24) | The National Tanners' Council filed a petition on Oct. 9, 1981, alleging breach by Argentina of a U.S.-Argentina hides agreement, and unreasonable restrictions on commerce imposed by Argentina hide export controls (46 FR 59353). | USTR initiated an investigation on Nov. 24, 1981. The US consulted with Argentina on Feb. 23 and April 15, 1982. USTR held a public hearing on Oct. 6, 1982, on a proposed recommendation to the President concerning termination (47 FR 40959). The US terminated the hides agreement effective Oct. 29, 1982, and the President increased the US tariff on leather imports effective Oct. 30 (47 FR 49625). Petitioner withdrew its petition on Nov. 9, 1982. USTR terminated the investigation on Nov. 16, 1982 (47 FR 52989). |

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| EC Pasta Export Subsidies (301-25) | The National Pasta Association filed a petition on Oct. 16, 1981, alleging EC violation of GATT Art. XVI and the Subsidies Code in using pasta export subsidies, resulting in increased imports into the US (46 FR 59675). | USTR initiated an investigation on Nov. 30, 1981. Beginning on Dec. 2, 1981, the US consulted with the EC several times. On March 1, 1982, the US referred this matter to the Subsidies Code Committee for conciliation. The US later requested a dispute settlement panel, and on April 7 the Committee authorized its establishment. The panel began its work on July 12. On July 21, the President directed USTR expeditiously to complete dispute settlement (47 FR 31861). The panel met again on Oct. 8 and issued factual findings on Jan. 20, 1983. At the EC's request, an additional panel meeting was held March 29. The panel report (3-1 in favor of the U.S.) was submitted to the Subsidies Code Committee May 19. The Committee considered the report on June 9 and Nov. 18, but deferred decision on adoption of the report.<br><br>In 1985 and 1986, the US increased duties on pasta imports in retaliation against the EC's discriminatory citrus tariffs (50 FR 26143, 33711; 51 FR 30146). The EC counter-retaliated by raising its duties on lemons and walnuts. See the Citrus case, Docket No. 301-11.<br><br>Under the agreement reached in that case on Aug. 10, 1986, both parties agreed to terminate their retaliatory duties (51 FR 30146) and to settle the pasta dispute through prompt, good faith negotiations.<br><br>A tentative agreement was reached on Aug. 5, 1987, under which the EC agreed to reduce its pasta export subsidies by 27.5%, which is intended to eliminate all export subsidies on half the pasta exported to the US. The Agreement was signed Sept. 15, 1987.<br><br>On Sept. 30, 1987, the President proclaimed that the Customs Service shall exclude from entry into the US any EC pasta unless accompanied by appropriate documentation determined by USTR to be |

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| EC Canned Fruit Production Subsidies (301-26) | The California Cling Peach Advisory Board et al. filed a petition on Oct. 23, 1981, alleging violation by the EC of GATT Art. XVI in granting production subsidies on EC member states' canned peaches, canned pears and raisins, that displace sales of non-EC products within the EC and impair tariff bindings on those products (46 FR 61358). | USTR initiated an investigation on Dec. 10, 1981. The US consulted with the EC under GATT Art. XXIII:1 on Feb. 25, 1982. The US requested a dispute settlement panel under Art. XXIII:2 on March 31, 1982. On Aug. 17, 1982, the President directed USTR to expedite dispute settlement (47 FR 36403). The panel met on Sept. 29 and Oct. 29, 1982. The panel report was submitted to the US and EC on Nov. 21, 1983. The panel met again with the parties on Feb. 27, 1984. A revised panel report was submitted to both parties on April 27, 1984. An additional panel meeting was held on June 28. A final panel report was issued on July 20. The US requested adoption of the panel report in GATT Council meetings of April 30, May 29, June 5 and July 16, but Council action was deferred because the EC was not yet ready to act on the report. On Sept. 7, 1985, the President directed USTR to recommend retaliation unless this case was resolved by Dec. 1, 1985. In December 1985 the US and the EC reached a settlement under which, in addition to subsidy reductions already implemented on canned pears, the EC agreed to phase out processing subsidies for canned peaches.<br><br>In October and November 1988 USTR consulted with the EC regarding its failure to fully implement the settlement agreement. Technical talks continued in 1989 regarding EC calculation of its subsidies, and the matter was raised at Ministerial level on February 18, 1989. |

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| Austria Specialty Steel Domestic Subsidies (301-27) | The Tool and Stainless Steel Industry Committee et al. filed a petition on Dec. 2, 1981, and refiled on Jan. 12, 1982, alleging that domestic subsidies for specialty steel industries in Belgium, France, Italy, U.K., Austria, Brazil and Sweden violate the GATT and Subsidies Code, and that imports from those coun- tries adversely affect the US industry (47 FR 10107). | USTR initiated an investigation on Feb. 26, 1982, with respect to allegations against Austria, France Italy, Sweden, and the U.K. The US consulted informally with those governments in March 1982. USTR held a public hearing on April 14, 1982. Consultations under the Subsidies Code were held in October 1982. On Nov. 16, 1982, the President directed USTR to: (1) request the ITC to conduct an expedited investigation under section 201 of the 1974 Trade Act; (2) initiate multilateral and/or bilateral discussions aimed at eliminating all trade distortive practices in the specialty steel sector; and (3) monitor US imports of specialty steel products subject to the Sec. 201 investigation (47 FR 51717). The ITC found injury. USITC Pub. 1377 (May 1983). Effective July 20, 1983, the President imposed a combination of tariffs and quotas (48 FR 33233). |
| France Specialty Steel Domestic Subsidies (301-28) | See 301-27. | See 301-27. |
| Italy Specialty Steel Domestic Subsidies (301-29) | See 301-27. | See 301-27. |
| Sweden Specialty Steel Domestic Subsidies (301-30) | See 301-27. | See 301-27. |
| U.K. Specialty Steel Domestic Subsidies (301-31) | See 301-27. | See 301-27. |
| Canada Railcar Export Subsidies (301-32) | The AFL-CIO et al. filed a petition on June 3, 1982, alleging that the Canadian Government's export credit financing for subway cars to be exported to the US violates the Subsidies Code and is unreasonable and a burden on US commerce (47 FR 31764). | USTR initiated an investigation on July 19, 1982. The US had already consulted with Canada under the Subsidies Code on July 5, 1982. USTR terminated the investigation on Sept. 23, 1982, because the same allegations were the subject of a countervailing duty investigation (47 FR 42059). |

| Country and Product Concerned | Complaint | Disposition or Present Status |
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| Belgium Specialty Steel Domestic Subsidies (301-33) | The Tool and Stainless Steel Industry Committee et al. filed a petition on June 23, 1982, alleging that domestic subsidies for Belgian steel production violate the GATT and Subsidies Code, and that imports of Belgian steel adversely affect the US industry (47 FR 35387). | USTR initiated an investigation on Aug. 9, 1982. The US consulted under the Subsidies Code in October 1982. The Presidential determination of Nov. 16, 1982 (see 301-27 above), covers this petition as well. |
| Canada Front-End Loaders Duty Remissions (301-34) | The J.I. Case Company filed a petition on July 27, 1982, alleging that Canada's regulations allowing remission of customs duties and sales tax on certain front-end loaders violate the GATT and Subsidies Code, are unreasonable and discriminatory and burden and restrict US commerce. Petitioner amended and refiled a petition on Sept. 13, 1982 (47 FR 51029). | USTR initiated an investigation on Oct. 28, 1982, and held a public hearing on Dec. 14, 1982. The US consulted with Canada under GATT Art. XXII on Dec. 21, 1982. |
| Brazil Non-rubber Footwear Import Restrictions (301-35) | The Footwear Industries of America, Inc. et al. filed a petition on Oct. 25, 1982, alleging that import restrictions on non-rubber footwear by the EC and the governments of France, Italy, the United Kingdom, Spain, Brazil, Japan, Taiwan and Korea deny US access to those markets, are inconsistent with the GATT, and are unreasonable and/or discriminatory and a burden on US commerce (47 FR 56428). | On Dec. 8, 1982, USTR initiated investigations of the alleged restrictive practices (other than allegations that GATT-bound tariffs are excessive) made against Brazil, Japan, Korea and Taiwan. Consultations under GATT Art. XXII were held April 4, 1983. In November 1985, Brazil offered to liberalize its import surcharge and to reduce tariffs. |

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| Japan Non-Rubber Footwear Import Restrictions (301-36) | See 301-35. | See 301-35. The US consulted on Jan. 27, 1983, and requested GATT Art. XXIII consultations in February 1984. Consultations under Art. XXIII:1 were held in April 1985. In July 1985, the US decided to proceed under Art. XXIII:2 and requested application of the conclusions reached by a dispute settlement panel in 1984 on the leather quota to the Japanese leather footwear quota as well (See 301-13).<br><br>On Sept. 7, 1985, the President directed USTR to recommend retaliation unless the leather and leather footwear restrictions were satisfactorily resolved by Dec. 1. In December 1985 Japan agreed to provide an estimated $236 million in compensation through reduced (or bound) Japanese tariffs. Also the US has raised tariffs on an estimated $24 million in imports into the US of leather and leather goods from Japan (51 FR 9435). |
| Korea Non-Rubber Footwear Import Restrictions (301-37) | See 301-35. | See 301-35. The US and Korea consulted on Feb. 5, 1983, and in August 1983. Korea reduced tariffs on footwear items and removed all leather items from the import surveillance list. |
| Taiwan Non-Rubber Footwear Import Restrictions (301-38) | See 301-35. | See 301-35. The US consulted with Taiwan on Jan. 17, 1983. On Dec. 19, 1983, the President determined that Taiwan does not impose unfair barriers on US imports; he nevertheless directed USTR to pursue offers regarding marketing assistance for US exporters (48 FR 56561). The issues raised in the petition are no longer the subject of an investigation. |

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| Korea Steel Wire Rope Subsidies and Trademark Infringement (301-39) | The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers filed a petition on March 16, 1983, alleging that production and export of Korean steel wire rope is subsidized, that Korea limits imports of steel wire rope from Japan thereby causing diversion to the US market, and that Korean rope producers are infringing US trademarks (48 FR 20529). | USTR initiated an investigation on May 2, 1983, with respect to claims of production subsidies. USTR held a hearing on June 2, 1983, and requested consultations under the Subsidies Code. Petitioner withdrew its petition on Nov. 29, 1983, and effective Dec. 15, 1983, USTR terminated the investigation (48 FR 55790). |
| Brazil Soybean Oil and Meal Subsidies (301-40) | The National Soybean Processors Association filed a petition on April 16, 1983, alleging that the governments of Argentina, Brazil, Canada, Malaysia, Portugal and Spain engage in unfair practices, including export and production subsidies and quantitative restrictions that restrict US exports of soybean oil and meal (48 FR 23947). | On May 23, 1983, USTR initiated an investigation involving Brazil, Portugal, and Spain. USTR held a public hearing on June 29 and 30. The US and Brazil consulted under Art. 12 of the Subsidies Code on Nov. 21. USTR submitted a recommendation to the President on Jan. 23, 1984; on Feb. 13, the President directed USTR to pursue dispute settlement procedures under the Subsidies Code (49 FR 5915). The US has requested additional consultations. |
| Portugal Soybean Oil and Meal Subsidies (301-41) | See 301-40. | The US and Portugal consulted under GATT Art. XXII on Nov. 29, 1983. In June 1984, Portugal began lifting its restrictions on soymeal imports. |
| Spain Soybean Oil and Meal Subsidies (301-42) | See 301-40. | The US and Spain consulted under GATT Art. XXII on Dec. 1, 1983. |
| Taiwan Rice Export Subsidies (301-43) | The Rice Millers Association filed a petition on July 13, 1983, which it withdrew on Aug. 26. It refiled on Sept. 29, 1983, alleging that Taiwan subsidizes exports of rice that restrict US exports and burden the US support program (48 FR 56289). | On Oct. 11, 1983, USTR initiated an investigation. Consultations were held Dec. 8-9, 1983, and Jan. 17-18 and Feb. 20-22, 1984. Based on an understanding reached during those discussions providing for limits on subsidized rice exports from Taiwan, petitioner withdrew its petition on March 9, 1984, and USTR terminated the investigation on March 22 (49 FR 10761). |

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| Argentina Air Couriers (301-44) | The Air Courier Conference of America filed a petition on Sept. 21, 1983, alleging that Argentina has acted unreasonably in granting exclusive control over the international air transporta- tion of time-sensitive commercial documents to the Argentine postal system (48 FR 52664). | On Nov. 7, 1983, USTR initiated an investigation and requested consultations. Consultations were held March 22, 1984. USTR held a public hearing on proposals for action under Sec. 301 on Oct. 24. On Nov. 16, 1984, the President determined that Argentine practices were unreasonable and a restriction on US commerce. He directed USTR again to consult, as requested by Argentina, and to submit proposals for action under Sec. 301 within 30 days. Prior to the 30-day period, Argentina lifted its prohibition for a 90-day period (49 FR 45733). In March 1985, the restrictions were lifted, but were replaced by heavy discriminatory taxes which are now the subject of renewed consultations. |
| Taiwan Films (301-45) | The Motion Picture Exporters Association of America filed a petition on Dec. 19, 1983, alleging that Taiwan discriminates against foreign film distributors (49 FR 5404). | On Jan. 30, 1984, USTR initiated an investigation. Petitioner withdrew its petition on April 17, 1984, USTR terminated the investigation on April 26 (49 FR 18056). |
| European Space Agency Satellite Launching Services (301-46) | Transpace Carriers, Inc. filed a petition on May 25, 1984, alleging that the member governments of the European Space Agency (ESA)--Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Sweden, Spain, Switzerland and the United Kingdom-- and their space-related instrumentalities subsidize satellite launching services offered by Arianespace (49 FR 28643). | On July 9, 1984, USTR initiated an investigation and requested consultations with the European Space Agency. Consultations were held Nov. 12-13 and Dec. 17-18, 1984, and Feb. 21-22 and May 20, 1985. The US consulted with Arianespace on May 21, 1985. On July 9, USTR submitted a recommendation to the President. On July 17, the President found that ESA's practices were not unreasonable, and terminated the investigation (50 FR 29631). |
| EC Triple Superphosphate Water Solubility Standard (301-47) | The Fertilizer Institute filed a petition on Aug. 17, 1984, alleging that a technical water solubility standard for triple superphosphate adopted by the EC is inconsistent with the Standards Code. | On Oct. 1, 1984, USTR initiated an investigation. The US and EC consulted under the Standards Code on Dec. 5-6, 1984. |

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| Japan Semiconductors (301-48) | The Semiconductor Industry Association filed a petition on June 14, 1985, alleging that the Japanese government has created a protective structure that acts as a major barrier to the sale of foreign semiconductors in Japan (50 FR 28866). | USTR initiated an investigation on July 11, 1985. USTR asked parties to submit comments regarding the petition by Aug. 26, 1985. The US and Japan consulted in August, September, November and December 1985, followed by technical discussions in January and February 1986, and further consultations in March, April, May, June and July. On July 31, 1986, the US and Japan reached agreement ad referendum under which Japan would increase access for US firms to the Japanese semiconductor market, and help prevent dumping of semiconductors in US and third country markets. The President approved this agreement in a determination under Sec. 301 and suspended the investigation (51 FR 27811), and the USTR signed the final agreement Sept. 2, 1986.<br><br>In March 1987, the Section 301 Committee requested public comment on possible US actions in response to Japan's failure to fulfill its obligations under the semiconductor agreement (52 FR 10275). A hearing was held April 13, 1987. On April 17, the President determined that Japan had not implemented or enforced major provisions of the agreement (52 FR 13419), and in response proclaimed increased duties on imports of certain articles of Japan (i.e., certain televisions, power hand tools, and automatic data processing machines) (52 FR 13412).<br><br>Effective June 16, 1987, USTR suspended increased duties on imports of 20-inch color televisions because of Japan's improved conformity with its obligations under the agreement (52 FR 22693). Effective Nov. 10, 1987, USTR suspended increased duties on imports of certain power hand tools, 18- and 19-inch color televisions, and low performance 16-bit desktop computers the product of Japan because of Japan's complete compliance with its "dumping" obligations under the Agreement (52 FR 216). The other |

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| | USTR COMPUTER GROUP | |

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| Brazil Informatics (301-49)* | On Sept. 16, 1985, USTR self-initiated an investigation at the President's direction into all aspects of Brazil's informatics policy, including investment restrictions, subsidies, and import restrictions (50 FR 37608). | After extensive discussions with US industry, the US consulted with Brazil in February, July, August and Sept. 1986. On Oct. 6, the President determined that Brazil's informatics policy is unreasonable, and continued the case until Dec. 31, 1986. He directed the Trade Representative to notify the GATT of our intention to suspend tariff concessions for Brazil under Art. XVIII, and to effect such suspension when appropriate (51 FR 35993).<br><br>On Dec. 30, the Trade Representative announced the President's determination to suspend the investigation with respect to Brazil's administration of its informatics policy and import restrictions, in light of improvement in these areas. However, because of insufficient progress to date in negotiations on related intellectual property protection and investment restrictions, the President announced he would determine the appropriate response of the US within six months unless a satisfactory resolution was reached (52 FR 1619).<br><br>On Feb. 10, 1987, USTR announced a hearing and invited public comment on specified intellectual property and investment issues in this case (52 FR 4207). On June 30, 1987, the President suspended the intellectual property portion of the investigation based upon Brazilian legislative action toward enactment of a bill that would provide adequate copyright protection to computer software (52 FR 24971). He also directed USTR to continue the portion of the investigation regarding investment.<br><br>On Nov. 13, 1987, the President announced his intention to prohibit imports of Brazilian informatics products and to raise duties or otherwise restrict imports of about $105 million in other Brazilian products. This action is in |

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| CONTINUED | | response to Brazil's breach of understandings regarding Brazil's market reserve policy, which furnished the basis for the President's suspension of the intellectual property portion of this investigation.<br><br>Public comments were requested (52 FR 44939, 47071), and a hearing was held Dec. 17 and 18, 1987.<br><br>On Feb. 29, 1988, retaliation was postponed to provide an opportunity to review Brazil's regulations to implement a software law enacted in December 1987. On June 17, 1988, USTR announced that it did not then propose to pursue retaliation, although it would monitor whether US firms obtained fair and equitable access to the Brazilian market for their software products. |
| Japan Tobacco Products (301-50)* | On Sept. 16, 1985, at the President's direction, USTR self-initiated an investigation of Japanese practices (including high tariffs, Japan Tobacco Institute's manufacturing monopoly, and distribution restrictions) that act as a barrier to US cigarette exports (50 FR 37609). | After discussions with US industry, on Feb. 3, 1986, USTR requested consultations with Japan. The US presented a lengthy questionnaire on Feb. 11, and held technical discussions Feb. 21. The US raised this case during Sub-Cabinet meetings on Feb. 28, and consulted in Tokyo on March 4 and on April 16-17. The US received answers to its questionnaire on March 21. The US consulted with Japan May 27-28; August 13, 18, and 28-29; Sept. 8, 9, 11, 25, 26 and 29; and Oct. 1-3. On Oct. 3, the US and Japan concluded an agreement under which Japan will reduce its tariff on cigarettes to zero, eliminate the discriminatory deferral in excise tax payment, and terminate discriminatory distribution practices. On Oct. 6, 1986, the President approved this agreement and suspended the investigation, directing that it be terminated when Japan fully implements the agreement (51 FR 35995). |

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| Korea Insurance (301-51)* | On Sept. 16, 1985, at the President's direction, USTR self-initiated an investigation of Korean practices that restrict the ability of US insurers to provide insurance services in the Korean market (50 FR 37609). | See 301-20. The US consulted with Korea in November and December 1985 and February, March and July 1986. On July 21, 1986, the White House announced the conclusion of an agreement with Korea that will increase US firms' access to the Korean insurance market by enabling them to underwrite both life and non-life insurance. The President approved the agreement and terminated the investigation on Aug. 14 (51 FR 29443). The final agreement was signed Aug. 28.<br><br>It was amended on Sept 10, 1987, setting forth more detailed requirements regarding insurance operations through joint ventures.<br><br>In January, 1988, the US and ROK further clarified the Sept. 10 amendment to specify the terms under which some Korean firms could participate in joint ventures. |
| Korea Intellectual Property Rights (301-52)* | On Nov. 4, 1985, USTR self-initiated an investigation of Korea's lack of effective protection of US intellectual property rights (50 FR 45883). | The US consulted with Korea in November and December 1985 and throughout February-July 1986. On July 21, 1986, the White House announced the conclusion of an agreement with Korea that will dramatically improve protection of intellectual property rights in Korea. The President approved the agreement and terminated the investigation on Aug. 14, 1986 (51 FR 29445). The final agreement was signed Aug. 28, 1986. Implementation of the agreement continues to be monitored, and on June 13, 1988, the Trade Representative formed an interagency task force to examine Korean practices related to obtaining and enforcing patent rights. The task force made a preliminary report to USTR in December 1988. Followup discussions are being held with the Korean Government. |



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| Argentina - Soybeans and Soybean Products (301-53) | The National Soybean Processors Association filed a petition on April 4, 1986, alleging that the differential in Argentine export taxes (higher for soybeans than for soybean products) provides Argentine crushers with an unfair cost advantage that burdens US exports in third-country markets. | USTR initiated an investigation on April 25, 1986 (51 FR 16764). Following bilateral consultations with Argentina, the President suspended this investigation on May 14, 1987, based upon Argentina's assurance that it planned to eliminate these export taxes and thus any differential (52 FR 18685).<br><br>In February 1988, Argentina reduced the export tax differential by 3 percent. However, on July 29, 1988, Argentina established a tax rebate on oil and meal exports to third countries which subsidize these products. Hence, consultations with Argentina resumed in August 1988. |

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| EC Enlargement (301-54)* | On March 31, 1986, the President announced his intention to (1) impose quotas on EC products if the EC did not remove certain quantitative restrictions on oilseeds and grains in Portugal; and (2) increase tariffs on EC products if the EC did not provide compensation for US losses resulting from the EC's imposition of variable levies on corn and sorghum imports into Spain in breach of prior tariff commitments. | On May 15, 1986, the President imposed quotas on EC imports in response to the EC's quantitative restrictions in Portugal (51 FR 18294). On Oct. 14, 1987, the level of these quota restrictions was increased to avoid a more damaging effect on EC trade than is warranted by the current operation of the EC restrictions in Portugal (52 FR 38167).<br><br>On July 2, 1986, an interim solution was reached with the EC with regard to the import levy restrictions in Spain. That solution provided that any shortfall in US corn, sorghum, and corn gluten feed exports to Spain below a monthly EC average of 234,000 metric tons through the remainder of 1986 would be compensated for through reduced import levy quotas in the EC.<br><br>On Dec. 30, 1986, the US announced that unless the EC agreed to compensate the US satisfactorily by the end of January for $400 million in lost corn and sorghum exports to Spain, the President would be compelled to impose duties of 200% ad valorem on imports into the US of certain EC cheeses, ham, carrots, endive, white wine, brandy and gin-accounting for $400 million in EC exports to the US. The President proclaimed these tariff increases on Jan. 21, 1987, to take effect Jan. 30 (52 FR 2663).<br><br>On Jan. 30, 1987, the US and EC settled this case. The EC agreed to ensure annual imports of corn and sorghum in Spain of 2 million and 300,000 metric tons, respectively. It also agreed to rescind its requirement in Portugal that 15 percent of the Portuguese grain market (about 400,000 metric tons) be reserved for sales from EC member countries. It further agreed to reduce duties on 26 other products (including plywood, apple and cranberry juices, and certain aluminum products), and to extend all current EC tariff bindings to Spain and |

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| CONTINUED | | Portugal. In light of these developments, the Trade Representative suspended the increased duties proclaimed Jan. 21, 1987 (52 FR 3523). |
| Canada Fish (301-55) | Icicle Seafoods and nine other seafood processors filed a petition on April 1, 1986, alleging that the Canadian prohibition on the export of unprocessed herring and salmon violates GATT Article XI and provides Canadian processors with an unfair cost advantage that burdens US exports in third country markets. | USTR initiated an investigation on May 16, 1986 (51 FR 19648), and requested comments on certain economic issues relating to the investigation. The US consulted with Canada under Art. XXIII:1 of the GATT Sept. 3 and Oct. 27, 1986, and presented arguments before a GATT dispute settlement panel on June 18 and July 10, 1987. The US won the case, and the favorable panel report was adopted by the GATT Council in February 1988. Canada has announced that it will terminate the export restrictions concerned by Jan. 1, 1989, although it will then adopt some new landing requirements. On August 30, 1988, a Federal Register notice (53 FR 33207) requested comments on the unfairness determination required under the Omnibus Trade and Competitiveness Act of 1988. The US and Canada are still consulting on Canada's plans to introduce new landing requirements. |
| Taiwan Customs Valuation (301-56)* | On Aug. 1, 1986, the President determined that Taiwan's use of a duty paying system to calculate customs duties violated a trade agreement and was unjustifiable and unreasonable and a burden or restriction on US commerce (51 FR 28219). He directed the Trade Representative to propose an appropriate method for retaliation. | By an exchange of letters dated Aug. 11, the Taiwan authorities agreed to take actions by Sept. 1, 1986, to abolish the duty paying schedule effective Oct. 1, 1986. USTR confirmed that Taiwan did so, and therefore advised the public that no retaliatory action would be proposed as earlier directed by the President (51 FR 37527). |

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| Taiwan Beer, Wine & Tobacco (301-57)* | On Oct. 27, 1986, the President determined that acts, policies and practices of Taiwan regarding the distribution and sale of US beer, wine and tobacco products in Taiwan are actionable under Section 301 (51 FR 39639). He decided to take proportional countermeasures so long as Taiwan continues these practices, and directed the Trade Representative to propose appropriate and feasible actions. | On Dec. 5, 1986, Taiwan agreed to cease the unfair practices complained of. As a result, USTR announced that no retaliatory action would be proposed as previously directed by the President (51 FR 44958). |
| Canada Softwood Lumber (301-58)* | On Dec. 30, 1986, the US and Canada concluded an agreement under which the Department of Commerce terminated a pending countervailing duty investigation (based upon withdrawal of the petition) after Canada agreed to impose a tax of 15% ad valorem on exports of certain softwood lumber products to the U.S. | Pending Canada's imminent imposition and collection of that tax as agreed, on Dec. 30, 1986, the President proclaimed--under Section 301 authority--a temporary additional duty of 15% ad valorem on imports of Canadian softwood lumber products (52 FR 229). On the same date, as the necessary predicate for the exercise of Section 301 authority, he determined that Canadian practices regarding the federal and provincial governments' terms and conditions for the harvest of stumpage (standing timber) were unjustifiable or unreasonable and a burden or restriction on US commerce (52 FR 231). Effective Jan. 8, Commerce suspended the import duty based on the Secretary's determination that Canada has begun to collect the export surcharge on exports to the US of certain softwood lumber products (52 FR 1311). On May 26, 1987, the Government of Canada passed legislation providing for this tax. |

### Questions By Senator Daniel Patrick Moynihan

1. The annual trade projections report is due to be submitted by the USTR and the secretary of the Treasury to the Finance Committee and the House Ways and Means Committee today, March 1. Could you state the major conclusions and recommendations in the report and describe the consultation process between USTR, Treasury and the Federal Reserve Board that was used to draft the report?

2. At a time when the United States is locked in a bitter debate with the EC over agricultural subsidies and credits to the USSR, can you explain your views on the fact that in 1987 and 1988 alone, a total of $473 million in subsidies was paid (in the form of surplus grain) to companies exporting wheat to the Soviet Union?

3. As a member of both the Finance and Foreign Relations Committees, I have a particular concern about the proposed FSX fighter aircraft agreement with Japan. I have already expressed my concern on the Senate floor and as a co-sponsor of a resolution that the proposed agreement provides minimal commercial benefit to the United States. Given that we have a huge trade deficit with Japan and Japan has an announced policy to challenge us in the commercial airliner market, can you explain your views on the FSX agreement?

4. I previously submitted a letter to USTR requesting that as part of the on-going review of the Generalized System of Preferences (GSP) program that provides duty-free entry into the United States for developing nations that Burma be removed from the list on the statutory basis of worker rights violations. Given that the President is due to make a decision on the Burma petition and others by April 1, can you tell me your current views on whether Burma will be removed from the list?

5. A New York company, Recreative Industries, has submitted an application for accelerated tariff elimination under the procedures contained in the Canadian Free Trade Agreement. RI is the only U.S. producer of six-wheel drive amphibious All-Terrain Vehicles, which are subject to a 9.2 percent Canadian duty scheduled to be phased out over ten years. I understand that the six-wheel ATVs were left off the zero duty list by an oversight. Will you urge an immediate phase out of the Canadian duty?

6. I Previously urged that the North American content requirement under the Canadian Free Trade Agreement be raised from 50 percent to 60 percent. A bilateral automotive panel is provided for under the agreement to examine this and other relevant issues and to make recommendations. Could you tell me what steps have been taken by USTR in this regard?

### Responses to Questions Submitted by Senator Moynihan

Question 1. The annual trade projections report is due to be submitted by the USTR and the Secretary of the Treasury to the Finance Committee and the House Ways and Means Committee today, March 1. Could you state the major conclusions and recommendations in the report and describe the consultation process between, USTR, Treasury and the Federal Reserve Board that was used to draft the report.

*Answer.* 1988 was a year in which substantial progress was made in reducing external imbalances. The U.S. current account deficit dropped from 3.4 percent of GNP to 2.8 percent of GNP. U.S. bilateral deficits declined with all major countries and regions of the world. On current economic projects, U.S. deficits can be expected to decline this year and next, albeit at a significantly slower pace than in 1988.

The report clearly concludes that to sustain the U.S. external correction, the rate of growth of U.S. domestic demand must be brought down below the rate of growth of GNP. Slowing domestic demand relative to GNP has as its reciprocal an increasing domestic saving rate and declining foreign deficit. To achieve this necessary adjustment, the report clearly recognizes the need for sustained reduction of the federal budget deficit and a commitment to bolstering saving rates.

Staffs at Treasury and my office coordinated work on this report for a period of several months. The report required access to a great deal of foreign country domestic macroeconomic and financial data as well as macroeconomic forecasting models, most of which are principally available to the Treasury Department. Cooperation, however, was outstanding with the report design, content and presentation developed in a joint effort by USTR and the Treasury. Coordination with the Federal Reserve Board was principally handled by the Treasury to check consistency of the report with the Board's own forecasts and analytical views on the major issues involved.

Question 2. At a time when the United States is locked in a bitter debate with the EC over agricultural subsidies and credits to the USSR, can you explain your views on the fact that in 1987 and 1988 alone, a total of $473 million in subsidies was paid (in the form of surplus grain) to companies exporting wheat to the Soviet Union?

*Answer.* The subsidies of the European Community were the primary reason that the Export Enhancement Program was begun in 1985. The U.S. had lost markets to subsidized EC products, and the EEP enabled U.S. products to once again compete in third-country markets. Thus, the use of subsidies was designed as a measured and targeted response by the U.S., one which we have always said we would be happy to give up if the EC and others would do the same.

We have found that the EEP has been a useful trade policy tool in bringing the EC to the bargaining table on agriculture. Clearly, if no one challenged the EC's takeover of world markets, there would be less reason for the Community to focus on the problems that subsidies cause in international trade. We are convinced that at least a part of the progress that we have made in the Uruguay Round negotiations to date is due to the selective use of the EEP.

Question 3. Given that we have a huge trade deficit with Japan and Japan has an announced policy to challenge us in the commercial airliner market, can you explain your views on the FSX agreement?

*Answer.* The President's decision to proceed with the FSX program came after he received the results of an intensive interagency review of the proposed program and subsequent agreement and clarification by the Japanese Government covering several key points. The program provides a number of economic and commercial benefits to the United States including an estimated $480 million workshare of the development budget, $2 billion of the production budget, an automatic flowback of FSX technology, and option to purchase solely Japanese developed FSX technology.

Question 4. I previously submitted a letter to USTR requesting that as part of the on-going review of the Generalized System of Preferences (GSP) program that provides duty-free entry into the United States for developing nations that Burma be removed from the list on the statutory basis of worker rights violations. Given that the President is due to make a decision on the Burma petition and others by April 1, can you tell me your current views on whether Burma will be removed from the list?

*Answer.* On April 13, the President announced the results of the 1988 GSP Annual Review, including a determination that Burma has not and is not taking steps to afford internationally recognized worker rights to its labor force. As a result, Burma's GSP eligibility will be suspended indefinitely 60 days after the President's announcement.

Burma severely limits the rights of workers to associate and to organize and bargain collectively. Burma permits the use of forced labor and does not strictly enforce its minimum age and health and safety requirements.

*Answer to 5.* USTR has received a request for accelerated tariff elimination from Recreative Industries for All Terrain Vehicles. This request will be among the group of products to be raised with the Canadian Government when we initiate substantive discussions. At present we are in the process of technically refining our list of tariff line items in preparation for publishing these items in the Federal Register and forwarding them to the ITC for its advice as required by law. We also are planning to obtain the views of the Advisory Committees established under section 135 of the Trade Act of 1974. We expect to have received this advice by late summer, at which time we will enter into negotiations with the Canadians for products where tariff staging acceleration can be mutually agreed upon.

*Answer to 6.* In early April, the Canadian and U.S. members of the select auto panel were announced by Ambassador Hills and Minister Crosbie. The U.S. Government has asked that the panel report on the issue of increasing the FTA automotive rule of origin, as well as other important issues affecting the U.S.-Canadian industry, as outlined in the Statement of Administrative Action. We have requested that the panel give priority consideration to the rule of origin and undertake its best efforts to report on this by the June 30, 1989 date. However, the panel is a binational group composed of private sector representatives. As such, it may be expected to set its own agenda within the general mandate established by Chapter 10 of the FTA.

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QUESTIONS FROM SENATOR DONALD W. RIEGLE, JR.

1) In analyzing the U.S.-Japan trade problem, the recent report of the President's Advisory Committee for Trade Policy and Negotiations (ACTPN) states that, for Japan's part:

"the remaining critical issues [are] a) whether stimulative tax and spending policies will continue beyond fiscal 1989; and b) whether Japan will accelerate structural reforms, e.g., in land use policy and economic regulation, that currently are being implemented very slowly."

| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| India Almonds (301-59) | The California Almond Growers Exchange filed a petition on Jan. 6, 1987, alleging that India's licensing requirements and steep tariffs on almonds are actionable under section 301. | On Feb. 20, 1987, USTR initiated an investigation and requested consultations with India (52 FR 6412 and 7057). The US consulted with India under GATT Art. XXIII:1 in June and September. USTR requested the establishment of a panel under Art. XXIII:2 at the GATT Councils in July, October and November. The US also raised almonds issues in the full consultations with India held in the GATT Balance of Payments Committee in October. In November 1987, the GATT Council agreed to the establishment of a panel. In May 1988, a satisfactory bilateral settlement was reached and USTR terminated the investigation (53 FR 21757).<br><br>The Indian Government established a separate quota for almonds, which increases access to that market, to the satisfaction of US industry. Moreover, India agreed to eliminate the quota in three years if its balance of payment position improves as specified in the Agreement. India also reduced and bound its tariff for shelled almonds and bound its tariff on unshelled almonds. |
| EC Third Country Meat Directive (301-60) | On July 14, 1987, the American Meat Institute, US Meat Export Federation, American Farm Bureau Federation, National Pork Producers Council and National Cattlemen's Association filed a petition complaining of the EC's Third Country Meat Directive as a violation of GATT Art. III and an unjustifiable, unreasonable or discriminatory practice that burdens US commerce. | On July 22, 1987, USTR initiated an investigation and requested consultations with the EC (52 FR 28223). The US consulted with the EC twice under GATT Art. XXIII:1, in September and November, 1987. USTR requested the establishment of a panel at the GATT Councils in October and November, but the EC blocked it. The EC acquiesced to that request at the December GATT Council. Since then, the EC has taken steps to provide access for a number of US meat packers. |

| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| Brazil Pharmaceuticals (301-61) | On June 11, 1987, the Pharmaceutical Manufacturers Association filed a petition complaining of Brazil's lack of process and patent protection for pharmaceutical products as an unreasonable practice that burdens or restricts US commerce. | On July 23, 1987, USTR initiated an investigation and requested consultations with Brazil (52 FR 28223). Consultations were held on Feb. 29, 1988, and additional discussions resulted in no resolution. On July 21, 1988, the President determined Brazil's policy to be unreasonable and a burden and restriction on US commerce, and he directed USTR to hold public hearings (See 53 FR 28100 and 30894) on certain products exported from Brazil. Hearings were held September 8-9, 1988.<br><br>On October 20, 1988 the President used section 301 authority to proclaim tariff increases to 100 % ad valorem on certain paper products, non-benzenoid drugs, and consumer electronics items, effective October 30, 1988 (53 FR 41551). On February 21, 1989, the GATT Council established a dispute settlement panel to examine the consistency of the U.S. measures with GATT. |
| EC Hormones (301-62)* | On Nov. 25, 1987, the President announced his intention to raise customs duties to a prohibitive level on as much as $100 million in EC exports to the US This action was in response to the implementation scheduled for Jan. 1, 1988 of the Animal Hormone Directive. Without valid scientific evidence, this directive would ban imports of meat produced from animals treated with growth hormones. However, the President said he would suspend increased duties if EC member states continued to allow such imports for a 12-month transition period. | On Dec. 24, on his own motion, the President proclaimed but immediately suspended increased duties on specified products of the EC (52 FR 49131), pending EC implementation of its Directive. He delegated authority to modify, suspend or terminate the increased duties (including to terminate the suspension of such increased duties) to the Trade Representative. The EC implemented its directive on January 1, 1989. In response, the USTR terminated the suspension of the increased duties, effective January 1, 1989, with some modifications (53 FR 53115). The US and EC agreed on January 12 to allow a grace period for goods exported, or meat certified for export, prior to January 1, if they entered before February 1 (54 FR 3032). On February 18, the US and EC established a task force of high-level government officials to seek a resolution to the hormones dispute by May 4, 1989. |

| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| EC Oilseeds (301-63) | On Dec. 16, 1987, the American Soybean Association filed a petition complaining that the EC's policies and practices relating to oilseeds and oilseed substitutes nullified and impaired benefits accruing to the United States under the GATT and, specifically, are inconsistent with a zero tariff binding agreed to by the EC. ASA alleged that the practices also are unjustifiable, unreasonable and burden or restrict US commerce. | On Jan. 5, 1988, USTR initiated an investigation and requested consultations with the EC (53 FR 984). The US consulted with the EC several times, both informally and formally, under GATT Art. XXIII:1. The EC blocked the US request for a panel at the May 1988 GATT Council, but acquiesced at the June 1988 Council. However, the EC delayed composition of the panel for several months with a number of procedural manouvers. |
| Korea Cigarettes (301-64) | On Jan. 22, 1988, the US Cigarette Export Association filed a petition complaining that the policies and practices of the Korean Government and its instrumentality the Korean Monopoly Corporation unreasonably denied access to the Korean cigarette market and were a burden or restriction on US commerce. | On Feb. 16, 1988, USTR initiated an investigation and requested consultations with the Government of Korea (53 FR 4926). The USTR signed an agreement with Korea on May 27, 1988, providing open, non-discriminatory access to the Korean cigarette market. Based on this agreement, the investigation was terminated on May 31, 1988. |
| Korea Beef (301-65) | On Feb. 16, 1988, the American Meat Institute filed a petition alleging that the ROK maintains a restrictive licensing system on imports of all bovine meat, in violation of GATT Article XI, which is unjustifiable, unreasonable, and burdens or restricts US commerce. | On March 18, 1988, USTR initiated an investigation (53 FR 10995). The US had already consulted with the ROK under GATT Art. XXIII:1. On May 4, 1988, GATT Council established a panel under Art. XXIII:2. Australia was also authorized a panel on the same matter, so consultations on panel selection included coordination between two panels. The first panel meeting was November 28, 1988; the second meeting was January 20, 1989. |

| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| Japan Citrus (301-66) | On May 6, 1988, Florida Citrus Mutual, et al. filed a petition alleging that Japan's import quotas on fresh oranges and orange juice contravene GATT Article XI, and their domestic content mixing requirements violate Art. III:5. | On May 25, 1988, USTR initiated an investigation. The US had already consulted with Japan under GATT Article XXIII:1, and a panel under Art. XXIII:2 had been authorized by GATT Council on May 4, 1988. Intensive settlement negotiations followed, and on July 5, 1988, a bilateral agreement was reached to settle the issue. Among other issues settled, import quotas on fresh oranges will end April 1, 1991, and on April 1, 1992 for orange juice; the blending requirement will be phased out in 1988-89 and eliminated as of April 1, 1990. Based upon this agreement, the citrus industry withdrew its petition and USTR terminated the investigation on July 5, 1988 (53 FR 25714). |
| Korea Wine (301-67) | On April 27, 1988, the Wine Institute and the Association of American Vintners filed a petition complaining of policies and practices of the Korean Government that unreasonably deny access to the Korean wine market and are a burden or restriction on US commerce. | On June 11, 1988, USTR initiated an investigation (53 FR 22607) and requested consultations with the Korean Government. Consultations were held October 11-12 in Washington and October 25 in Seoul. Further consultations finally resulted in an agreement, reached on January 18, 1989, in which Korea agreed to provide foreign manufacturers of wine and wine products non- discriminatory and equitable access to the Korean market. The investigation was terminated on January 18, 1989. |
| Argentina Pharmaceuticals (301-68) | On August 18, 1988, the Pharmaceutical Manufacturers Associations (PMA) filed a petition complaining of Argentina's denial of product patent protection for pharmaceuticals and discriminatory product registration practices. PMA alleged these practices are unreasonable and discriminatory and burden or restrict US commerce. | On September 25, 1988, USTR initiated an investigation (53 FR 37668), and requested public comments in order to request consultations with the Argentine government. Initial consultations were held in Buenos Aires in December 1988. |

| Country and Product Concerned | Complaint | Disposition or Present Status |
|---|---|---|
| Japan Construction-related Services (301-69)* | Section 1305 of the Omnibus Trade and Competitiveness Act of 1988, enacted August 23, 1988, required the USTR to initiate an investigation regarding the acts, policies, and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance by US persons of architectural, engineering, construction and consulting services in Japan. | USTR initiated an investigation on November 21, 1988, and requested public comment by December 20, 1988 (53 FR 47897). Consultations with Japan were requested, to be scheduled following a public hearing. A hearing will be held March 13, 1989 (54 FR 2033). |
| EC Copper Scrap (301-70) | The Copper and Brass Fabricators Council, Inc., filed a petition on November 14, 1988, alleging that export restrictions on copper scrap and zinc scrap maintained by the European Community, the United Kingdom and Brazil violate the GATT and burden and restrict US commerce. On December 27 petitioners withdrew the allegations regarding Brazil and zinc scrap. | USTR initiated an investigation on December 29, 1988, involving the practices of the EC and UK. Comments were requested and a public hearing was held on January 27, 1989 (54 FR 338). USTR advised the EC of its intention to schedule GATT consultations after the public hearing. On January 25, 1989, USTR informed the UK that the investigation would proceed only as to the EC, since the UK had represented that its regulations merely implemented the EC export controls and did not constitute separate restrictions. |
| * Denotes actions initiated without having received a petition. | | |
| ***** | ***** | ***** |
| Taiwan Export Performance Requirements (307-1)* | On March 31, 1986, at the direction of the President, USTR self-initiated the first investigation under section 307 of the Trade and Tariff Act of 1984 concerning export performance requirements in the automotive sector (51 FR 12008). | USTR requested written public comments, and consulted with Taiwan authorities in June, August and September. On Sept. 12, an agreement was reached under which Taiwan would lift existing automotive export performance requirements (EPRs) by Summer 1987; apply no new automotive EPRs; and grant the right for existing auto investments to be expanded without new EPRs. Based upon this agreement, USTR terminated the investigation (51 FR 41558). |

The report's prescription would have the U.S. force these paramount issues indirectly, i.e., by seeking agreements establishing "appropriate sectoral import levels that properly reflect the international competitiveness of U.S. suppliers."

Previous Administrations have been disinclined, as a matter of general policy, to conduct trade policy in this fashion. Are you similarly disinclined? If so, what alternative strategy does the Administration propose to ensure that Japan will undertake the critical structural reforms necessary for a satisfactory reduction in our trade imbalance? What will be the role of trade policy in such a strategy?

### Responses to Senator Riegle's Questions

Question. What is USTR's response to the ACTPN report?

*Answer.* USTR is currently involved in an interagency process reviewing U.S.-Japan trade policy. During this process, we will address many of the issues you mentioned. A variety of trade options and approaches will be fully considered, including recommendations made in the ACTPN report. However, there has been no reversal of the free-trade, open-market policy that the United States has followed for some time towards Japan and other nations of the world. We will continue to stress an overall policy of promoting open markets, free trade, and an expansion of the multilateral trading system.

# COMMUNICATIONS

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March 22, 1989

The Honorable Fortney H. Stark, Chairman
Ways and Means Health Subcommittee
1114 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman

Per your request at the March 1, 1989, hearing of the Ways and Means Subcommittee on Health, enclosed is the American Hospital Association's (AHA) list of community hospital closures in 1988. I respectfully ask that the list and this letter setting forth AHA's methodology for determining closures be made a part of the hearing record.

The definition of a community hospital closure and the process that AHA uses to compile its closure list have been consistent over time and are based on sound methodology. The list includes community hospitals closed as of a given date each year--December 27 in 1988. AHA considers a hospital closed when one or both of two conditions are met on that date:

- the hospital no longer provides acute inpatient care; and/or
- the hospital is no longer licensed or registered with a state.

Even if a closed hospital continues to provide outpatient, rehabilitation, or other health care services, it is still counted as a closed community hospital because it does not provide the full range of services patients expect from, and does not meet the definition of, a community hospital. In 1988, this was true of 17 of the 81 facilities on AHA's list of community hospital closures, just as similar closures would have been in past years.

AHA recognizes that many, if not most, closed hospitals hope to reopen at some point, but intent notwithstanding, because the facility has discontinued inpatient services (other than for construction or seasonal purposes) or is not licensed, AHA counts it as closed. AHA identifies community hospital closures in three ways:

- several surveys taken each year;
- changes in membership status that prompt direct contacts with hospitals; and
- contacts with state hospital associations and state licensure agencies.

Occasionally, there is disagreement over a specific hospital closure, and AHA works to reconcile the discrepancy. The number of such cases is quite small. In 1988, three hospitals were involved. Each case involved a distressed hospital attempting to reorganize. After discussions with both the hospital and the state licensure agency, we concluded that the hospitals should be classified as "closed" since none appeared to be providing acute inpatient care at the end of 1988 when their status was verified. Each of these facilities appears to have succeeded in reorganizing but reopened either in the last week of 1988, after our canvas concluded, or in 1989. Should these hospitals survive through 1989 we will count them as new hospitals, unless it becomes evident that they did not actually close in 1988, in which case we will revise the 1988 closure list. In the fourth case, Cullen Women's Center in Texas, our discussions with the state licensure agency in 1988 indicated that the closure occurred in 1988. Since then, the state agency has informed us that the hospital stopped functioning as an acute inpatient hospital in late 1986. However, the state agency did not identify the hospital as closed in either 1986 or 1987 at the time of our canvas.

You should be aware that the process of identifying closures also fails to identify some hospitals that close during a year. For example, our continuing efforts to identify both new hospitals and hospital closures has already turned up three hospitals that closed in 1988 but which were not identified last year and which do not appear on the 1988 list. When we issue the closure data in 1989, we will revise the 1988 figures to reflect this new information. Such revision is our standard practice.

These individual cases simply illustrate the inherent complexity of identifying hospital closures. AHA acknowledges that the process requires judgment when an occasional case is neither black nor white, but AHA stands by its hospital closure data as accurate. Further, if the subcommittee would find it helpful for AHA to identify closed community hospitals that are offering non-acute or

non-inpatient services in addition to "new" hospitals that have reopened since the previous year, the Association will attempt to do so in the future. (Closed community hospitals offering acute rehabilitation services only are already listed as "new" community hospitals; closed community hospitals offering acute psychiatric health care services only are already listed as "new" specialty service hospitals.)

To provide further context for the attached list, I would add that AHA views the collection of data, whether to document closures or other aspects of operations, with utmost seriousness and approaches that task with due diligence and absolute honesty. Hospital closure data have been collected annually since 1980. Our survey is factual, our methodology has remained consistent and thorough, and in no way have our conclusions been influenced by our policy agenda. Most data discrepancies between AHA's surveys and those conducted by others are attributable to definitional differences.

A close examination of our advocacy to protect patients from the impact of hospital payment reductions will show we have not focused disproportionately on the issue of hospital closures. Nor have closure data constituted the cornerstone of our Medicare advocacy efforts. We recognize--and publicly have emphasized--that Medicare payment shortfalls are one of many factors responsible for hospital closures. Furthermore, AHA acknowledges that some hospital closures may be appropriate but they should not result from the impact of inequities in payment systems, and they should not significantly reduce access to essential health care services in a community.

Indeed, hospital closures may not be the major threat in fiscal 1990. The best data available to the AHA indicate that, even under the current law, Medicare payments in the year ahead will fail to cover the cost of services provided to Medicare beneficiaries in two-thirds of the nation's hospitals. With such a large percentage of hospitals experiencing Medicare payment shortfalls, the more pressing problem may well be curtailed services, such as the shut down of trauma centers and emergency rooms.

I hope this discussion and attached list answer your questions, Mr. Chairman. My staff and I remain ready to provide more detail, if needed.

Sincerely

Carol M. McCarthy, Ph.D., J.D.
President

Enclosure

AMERICAN HOSPITAL ASSOCIATION
COMMUNITY HOSPITAL CLOSURES 1988
(SEE ATTACHED FOOTNOTES)

| STATE | HOSPITAL | CITY | BEDS | SERVICE |
|---|---|---|---|---|
| **REGION=1** | | | | |
| MAINE | CASTINE COMMUNITY HOSPITAL | CASTINE | 12 | 10 |
| MASSACHUSETTS | BROOKLINE HOSPITAL | BROOKLINE | 56 | 10 |
| MASSACHUSETTS | FARREN MEMORIAL HOSPITAL | MONTAGUE | 72 | 10 |
| **REGION=2** | | | | |
| NEW YORK | PARSONS HOSPITAL | FLUSHING | 100 | 10 |
| NEW YORK | EMMA LAING STEVENS HOSPITAL | GRANVILLE | 25 | 10 |
| NEW YORK | JAMESTOWN GENERAL HOSPITAL | JAMESTOWN | 99 | 10 |
| NEW YORK | JOHNSTOWN HOSPITAL | JOHNSTOWN | 39 | 10 |
| NEW JERSEY | LIVINGSTON COMMUNITY HOSPITAL | LIVINGSTON | 94 | 10 |
| PENNSYLVANIA | ST MARY HOSPITAL | PHILADELPHIA | 160 | 10 |
| **REGION=3** | | | | |
| WEST VIRGINIA | ELIZABETH C LEONARD MEM HOSP | BUCHANNON | 20 | 10 |
| WEST VIRGINIA | HOLDEN HOSPITAL | HOLDEN | 26 | 10 |
| WEST VIRGINIA | GUTHRIE MEMORIAL HOSPITAL | HUNTINGTON | 12 | 10 |
| WEST VIRGINIA | WYOMING GENERAL HOSPITAL | MULLENS | 25 | 10 |
| WEST VIRGINIA | TUCKER COUNTY HOSPITAL | PARSONS | 25 | 10 |
| NORTH CAROLINA | BLACKWELDER MEMORIAL HOSPITAL | LENOIR | 25 | 10 |
| GEORGIA | FIRST HEALTH WEARD | FRANKLIN | 29 | 10 |
| FLORIDA | UNIVERSITY HOSPITAL | HOLLY HILL | 97 | 10 |
| **REGION=4** | | | | |
| OHIO | NORTHEASTERN OHIO GEN HOSPITAL | MADISON | 66 | 10 |
| ILLINOIS | HOSPITAL OF ENGLEWOOD | CHICAGO | 121 | 10 |
| ILLINOIS | FRANK CUNEO MEMORIAL HOSPITAL | CHICAGO | 106 | 10 |
| ILLINOIS | ST ANNE'S HOSPITAL | CHICAGO | 219 | 10 |
| ILLINOIS | MARY THOMPSON HOSPITAL | CHICAGO | 203 | 10 |
| ILLINOIS | ST ANNE'S HOSPITAL-WEST [2] | NORTHLAKE | 78 | 10 |
| ILLINOIS | WHITE HALL HOSPITAL | WHITE HALL | 30 | 10 |
| MICHIGAN | ORCHARD HILLS HOSPITAL [3] | BELDING | 56 | 10 |
| MICHIGAN | BAY AREA MEDICAL CTR-MENOMINEE | MENOMINEE | 40 | 10 |
| WISCONSIN | ST ANTHONY'S FAMILY MED CTR | MILWAUKEE | 303 | 10 |
| WISCONSIN | NEW BERLIN MEMORIAL HOSPITAL | NEW BERLIN | 82 | 10 |
| WISCONSIN | BAYFIELD COUNTY MEM HOSPITAL | WASHBURN | 121 | 10 |
| **REGION=5** | | | | |
| TENNESSEE | SCOTT MEMORIAL HOSPITAL | LAWRENCEBURG | 64 | 10 |
| TENNESSEE | JOHNSON COUNTY MEM HOSPITAL | MOUNTAIN CITY | 66 | 10 |
| TENNESSEE | SMYRNA HOSPITAL | SMYRNA | 33 | 10 |
| TENNESSEE | ST MARY'S NORTH HOSPITAL | LAKE CITY | 20 | 10 |
| ALABAMA | HENRY COUNTY HOSP & NRSG HOME | ABBEVILLE | 100 | 11 |
| ALABAMA | COLUMBIA REGIONAL MEDICAL CTR | ANDALUSIA | 107 | 11 |
| ALABAMA | FIRST HEALTH COURTLAND | COURTLAND | 35 | 11 |
| ALABAMA | MEDICAL PARK WEST | BIRMINGHAM | 50 | 11 |
| ALABAMA | CHAMBERS COUNTY HOSPITAL | LAFAYETTE | 38 | 11 |
| ALABAMA | PERRY COMMUNITY HOSPITAL | MARION | 47 | 11 |
| ALABAMA | NORTH MOBILE COMM HOSPITAL | SATSUMA | 33 | 11 |
| **REGION=6** | | | | |

| | | | | |
|---|---|---|---|---|
| MISSOURI | LINDELL HOSPITAL | ST LOUIS | 51 | 10 |
| MISSOURI | UNIVERSITY OF HEALTH SCIENCES | KANSAS CITY | 124 | 10 |
| SOUTH DAKOTA | IPSWICH COMMUNITY HOSPITAL | IPSWICH | 21 | 10 |

---------- REGION=7 ----------

| | | | | |
|---|---|---|---|---|
| ARKANSAS | RIVERVIEW HOSPITAL | LITTLE ROCK | 50 | 10 |
| ARKANSAS | WOODRUFF COUNTY HOSPITAL | MCCRORY | 139 | 10 |
| ARKANSAS | LEE MEMORIAL HOSPITAL | MARIANNA | 25 | 10 |
| LOUISIANA | FAIRVIEW HOSPITAL | BAYOU VISTA | 49 | 10 |
| LOUISIANA | REGENT HOSPITAL FELICIANA | CLINTON | 36 | 10 |
| LOUISIANA | GUEYDAN MEMORIAL HOSPITAL | GUEYDAN | 21 | 10 |
| LOUISIANA | TENSAS MEMORIAL HOSPITAL | NEWELLTON | 30 | 10 |
| LOUISIANA | PLEASANT HILL GENERAL HOSPITAL | PLEASANT HILL | 30 | 10 |
| OKLAHOMA | CORDELL MEMORIAL HOSPITAL | CORDELL | 28 | 10 |
| OKLAHOMA | E P CLAPPER MEM MEDICAL CENTER | WAYNOKA | 24 | 10 |
| TEXAS | WANTROP REGIONAL MED CENTER | BASTROP | 25 | 10 |
| TEXAS | GOLDEN PLAINS COMM HOSPITAL | BORGER | 52 | 10 |
| TEXAS | MILAM REGIONAL MEDICAL CENTER | CAMERON | 48 | 10 |
| TEXAS | COMFORT COMMUNITY HOSPITAL | COMFORT | 26 | 10 |
| TEXAS | GASTON EPISCOPAL HOSPITAL | DALLAS | 104 | 10 |
| TEXAS | FLOW MEMORIAL HOSPITAL | DENTON | 111 | 10 |
| TEXAS | LANDMARK MEDICAL CENTER | EL PASO | 207 | 10 |
| TEXAS | WHITCOMB MEMORIAL HOSPITAL | GRAND PRAIRIE | 9 | 10 |
| TEXAS | ROBERTSON REG MEDICAL CENTER | HEARNE | 33 | 10 |
| TEXAS | CULLEN WOMEN'S CENTER[4] | HOUSTON | 32 | 44 |
| TEXAS | MARION COUNTY HOSPITAL | JEFFERSON | 37 | 10 |
| TEXAS | KIRBYVILLE COMMUNITY HOSPITAL | KIRBYVILLE | 24 | 10 |
| TEXAS | COMMUNITY HOSPITAL OF LUBBOCK | LUBBOCK | 76 | 10 |
| TEXAS | KING WILLIAM HEALTH CARE CTR | SAN ANTONIO | 159 | 46 |
| TEXAS | SHINER HOSPITAL | SHINER | 30 | 10 |
| TEXAS | TAFT HOSPITAL DISTRICT | TAFT | 70 | 10 |
| TEXAS | TEAGUE GENERAL HOSPITAL | TEAGUE | 20 | 10 |
| TEXAS | CHRI HOSP AND MEDICAL CENTER | HOUSTON | 84 | 10 |

---------- REGION=8 ----------

| | | | | |
|---|---|---|---|---|
| MONTANA | MISSION VALLEY HOSPITAL | ST IGNATIUS | 29 | 10 |
| IDAHO | MARSH VALLEY HOSPITAL | DOWNEY | 17 | 10 |
| NEW MEXICO | CUBA HOSPITAL | CUBA | 9 | 10 |
| ARIZONA | PHOENIX GENERAL HOSPITAL | PHOENIX | 202 | 10 |

---------- REGION=9 ----------

Footnotes to the American Hospital Association
1988 Community Hospital Closures:

St. Mary Hospital - Philadelphia, Pennsylvania

Hospital had filed for bankruptcy early, 1988. April 30, first layoffs began, layoffs were scheduled for every Friday until May 21, when hospital doors would be shut. An injunction was filed against the hospital to keep the facility from closing. Phone contact in October indicated that the facility was still in the process of shutting down. Phone contact in late December indicated that the facility had been purchased by HSI investment group and that the facility had closed. The new facility, when reopened, will be known as Neumann Medical Center, an acute care, investor-owned facility.

'St. Anne's Hospital-East - Northlake, Illinois

Hospital reported to the AHA it closed as of October 1, 1988. Direct contact was made through the AHA membership department three times in 1988. Each

time, the facility indicated that it was closed. Phone contact in December indicated that the hospital had been sold and renamed Leyden Community Hospital. Recommendation by state licensure department was to consider St. Anne's-West a closure, based on AHA's definition. New hospital changed control from church-operated to investor-owned facility.

**'Orchard Hills - Belding, Michigan**

In October, Orchard Hills informed AHA's membership department of its closure. Hospital was contacted in December and informed that the original owners ceased operations in October. The hospital is now operated by Metropolitan Hospital, Grand Rapids, under a lease/purchase option. In fact there are two leases: 25 beds are being leased as acute beds, another 25 beds are being leased as a detoxification and drug center.

**'Dallas Women's Center - Dallas, Texas**

Closure reported to AHA by Texas Department of Health as of 7/01/88. Facility was on AHA, Texas Hospital Association, and Texas Department of Health files as an Obstetrics and Gynecology hospital. AHA as well as the Texas Department of Health had not been informed that the hospital had been operating only as an outpatient facility for two years.

Upon further research, we have determined that inpatient services ceased at the hospital late in 1988. Therefore, this facility will now be listed as a 1988 closure.

Addendum

Additional 1988 Hospital Closures — March 1989 update

Scranton State General Hospital - Scranton, Pennsylvania
Hospital closed 12/31/88. Verified by Pennsylvania Hospital Association and licensing agency. Lawsuit pending to reopen facility.

Turner County Hospital - Ashburn, Georgia
Closed 10/30/88. Verified by Georgia Hospital Association and by hospital. Facility hopes to reopen by July, 1989.

Dahl Memorial Hospital - Ekalaka, Montana
Acute care beds closed 6/30/88. Nursing home still open. Lost doctor and have not been able to find replacement. Have applied for special CON to operate a "medical facility" supervised by a physician assistant. Under the new arrangement, length of stay could be no more than 96 hours. This is a type of license developed thru cooperation between the Montana licensing department and Montana Hospital Association. The institution hopes to receive CON and operate this new type of facility by 7/01/89. Hospital is still closed per administrator.

## DEFINITION OF TERMS

A hospital closure is defined as the physical closure or corporate cessation of a hospital facility, or the discontinuation of inpatient medical admissions as of Dec. 31 of each year. Hospital mergers and consolidations are not included. Closure information was acquired by direct report to the American Hospital Association, and through an end-of-year canvass of each state hospital association and licensure agency. Each closure was verified by a representative of the closed hospital whenever possible.

Community hospitals include all nonfederal, short-term, general and other special hospitals whose facilities are open to the public; excluded are hospital units of institutions, psychiatric hospitals, and alcoholism and chemical dependency facilities.

Control refers to the type of organization responsible for establishing policy concerning the overall operation of the hospital. The four major categories are government, nonfederal; nongovernment, not-for-profit; investor-owned (for-profit); and government, federal.

Beds refer to the number of beds set up and staffed for use in the hospital as reported to the American Hospital Association. The number of beds shown will reflect the size of the hospital when functioning normally. The bed statistics may not reflect reductions that occurred during the months prior to closure. The tables contain breakdowns by size categories: 6 to 24 beds, 25 to 49, 50 to 99, 100 to 199, 200 to 299, 300 to 399, 400 to 499 and 500 or more.

Census regions refer to the nine geographical regions into which the U.S Department of Commerce, Bureau of the Census, divides the 50 states.

Sources: Hospital Statistics 1988 Edition, AHA Membership records and files, annual surveys, state associations, state licensure agencies and AHA Hospital Data Center files.

1988 HOSPITAL OPENINGS ON RECORD AS OF FEBRUARY 1989

| | HOSPITAL NAME | CITY | BEDS | SERVICE |
|---|---|---|---|---|
| REGION 2 | | | | |
| Pennsylvania | Southwood Psychiatric Hospital | Pittsburg | 36 | 22 |
| Pennsylvania | Greater Pittsburg Rehab Hospital | Monroeville | 85 | 46 |
| Pennsylvania | UHS/Keystone Center | Chester | 72 | 82 |
| REGION 3 | | | | |
| Florida | Englewood Community Hospital | Englewood | 100 | 10 |
| Florida | Wellington Reg. Medical Center | West Palm Beaches | 120 | 10 |
| Florida | West Boca Medical Center | Boca Raton | 170 | 10 |
| Florida | Atlantic Shores Hospital | Daytona Beach | 50 | 22 |
| Florida | Capital Rehabilitation Hospital | Tallahassee | 40 | 46 |
| Florida | Rehab Inst of Sarasota | Sarasota | 60 | 46 |
| Florida | Glenbeigh Hospital of Miami | Hialeah | 100 | 82 |
| Florida | Methodist Pathway Center | Jacksonville | 25 | 82 |
| Georgia | Hillside Hospital | Atlanta | 40 | 22 |
| Delaware | Meadow Wood Center | New Castle | 35 | 22 |
| West Virginia | Western Hills Reg. Rehab Hospital | Parkersburg | 40 | 46 |
| REGION 4 | | | | |
| Indiana | Oaklawn Hospital | Goshen | 78 | 49 |
| Illinois | Alcoholism Treatment Center | Winfield | 62 | 82 |
| Illinois | Careunit of Dupage | Downers Grove | 100 | 82 |
| REGION 5 | | | | |
| Mississippi | Parkwood Hospital | Olive Branch | 40 | 22 |
| Alabama | Montgomery Rehab Hospital | Montgomery | 80 | 46 |

| | | | | |
|---|---|---|---|---|
| **REGION 6** | | | | |
| Minnesota | St. John's Northeast Hospital | Maplewood | 100 | 10 |
| Nebraska | Richard H. Young Hospital | Kearney | 80 | 22 |
| **REGION 7** | | | | |
| Texas | HCA Denton Community Hospital | Denton | 58 | 10 |
| Texas | Trinity Valley Medical Center | Palestine | 109 | 10 |
| Texas | CPC Capital Hospital | Austin | 92 | 22 |
| Texas | Charter Hospital of Fort Worth | Fort Worth | 80 | 22 |
| Texas | Forest Springs Hospital | Houston | 36 | 22 |
| Texas | HCA Richland Hospital | North Richland Hills | 73 | 22 |
| Texas | River Crest Hospital | San Angelo | 80 | 22 |
| Texas | Stafford Meadows | Stafford | 88 | 22 |
| Texas | Rehab Hospital of South Texas | Corpus Christi | 80 | 46 |
| Texas | Rehab Inst. of San Antonio | San Antonio | 108 | 46 |
| Texas | Rio Vista Rehab Hospital | El Paso | 80 | 46 |
| Louisiana | HCA North Monroe Pavilion | Monroe | 48 | 22 |
| Arkansas | Fort Smith Rehab Hospital | Fort Smith | 54 | 46 |
| **REGION 8** | | | | |
| Arizona | Del E Webb Memorial Hospital | Sun City West | 45 | 10 |
| Arizona | East Valley Camelback Hospital | Mesa | 82 | 22 |
| Idaho | Mountain River Hospital | Idaho Falls | 40 | 10 |
| Colorado | Charter Hospital of Aurora | Aurora | 80 | 22 |
| New Mexico | Mesilla Valley Hospital | Las Cruces | 30 | 22 |
| Utah | Western Rehab Institute | Sandy | 86 | 46 |
| **REGION 9** | | | | |
| California | Branch Hospital | Twenty Palms | 30 | 10 |
| California | Christian Hospital Medical Center | Perris | 36 | 10 |
| California | CPC Sierra Gateway Hospital | Fresno | 93 | 22 |
| California | HCA Cedar Vista Hospital | Fresno | 38 | 22 |

SOURCE: New hospital openings in 1988 as reported to the American Hospital Association's Division of Membership as of February 1989. If two or more hospitals merge to form a new corporate entity, the resultant corporate entity is not considered a new hospital for purposes of this list.

REGION: Region is defined as U.S. Census Division. If no openings have been reported for a state, it is not listed within the region category.

BEDS: Beds set up and staffed for use as reported to the American Hospital Association Division of Membership.

**SERVICE DESCRIPTION**

10 = General Medical and Surgical
11 = Hospital Unit of Institution
22 = Psychiatric
33 = Tuberculosis and Other Respiratory
44 = Obstetrics and Gynecology
45 = Eye Ear Nose and Throat
46 = Rehabilitation
47 = Orthopedic
48 = Chronic Disease
49 = Other Specialty
82 = Institute for Mental Retardation
82 = Alcoholism and Chemical Dependency
50 = Child General Medical and Surgical
51 = Child Hospital Unit of Institution
52 = Child Psychiatric
53 = Child Tuberculosis and Other Respiratory
55 = Child Eye Ear Nose and Throat
56 = Child Rehabilitation
57 = Child Orthopedic
58 = Child Chronic Disease
59 = Child Other Specialty

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March 14, 1989

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Kenneth Mason
Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: Comments on Interim Rules Regarding Temporary Relief

Dear Mr. Mason:

I have composed this letter to inform the U.S. International Trade Commission of further developments regarding recent comments by the American Intellectual Property Law Association ("AIPLA") Committee on the International Trade Commission ("the Committee") on certain interim rules propounded by the Commission. The Committee comments were directed to the Commission's "interim rules governing the posting and possible forfeiture of temporary relief bonds by complainants in investigations of unfair practices in import trade," 53 Fed. Reg. 44,118 (1988). The Committee's comments on the two notices were filed on February 6, 1989.

At the AIPLA 1989 Mid-Winter Meeting the AIPLA Board voted to adopt as association position the comments submitted by the Committee on February 6, 1989. The Board also adopted the following resolution put forward by the Committee at the Mid-Winter Meeting:

> The Commission's proposed rules regarding the posting and possible forfeiture of temporary relief bonds, 53 Fed. Reg. 49,118 (1988) are opposed by the Committee: The proposed rules provide for procedural impediments and onerous bond requirements that contravene Congressional intent that temporary relief be a more accessible remedy to aggrieved domestic industries.

I have submitted for the Commission's information the ITC Committee Report which details the bases for the resolution and includes the position of the AIPLA and the Committee. The pertinent section of the Committee Report restates the substance of the original Committee comments and provides the bases for the AIPLA's adoption of the above-quoted resolution.

Sincerely,

Jack C. Goldstein

Jack C. Goldstein
President

Enclosure

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JOHN A. MITCHELL
OF COUNSEL

* ADMITTED IN THE DISTRICT OF COLUMBIA

March 30, 1989

Senator Lloyd Bentsen
SH-703 Hart Senate Office Building
Washington, D.C. 20510-4301

Re: Implementation of the Omnibus Trade and Competitiveness Act of 1988; AIPLA Comments on Proposed ITC Rules

Dear Senator Bentsen:

Pursuant to the notice of February 7, 1989, announcing that the Senate Finance Committee will accept written comments on implementation of the Omnibus Trade and Competitiveness Act of 1988, I have enclosed a copy of pertinent materials from the American Intellectual Property Law Association ("AIPLA"). The materials include comments submitted by the AIPLA in response to notices of proposed rulemaking under 19 U.S.C. § 1337 ("Section 337") by the United States International Trade Commission. The comments, which accompanied the two enclosed cover letters to the Commission, are in the form of an AIPLA Committee Report and resolutions adopted by the AIPLA Board.

The two areas of concern addressed by the AIPLA's comments are the Commission's proposed rulemaking on: (1) a duty of candor and related procedures, and (2) bond requirements and forfeiture provisions applicable to requests for temporary relief.

The Commission's rulemaking will have significant and lasting effects on the utility and efficiency of investigations under Section 337. The AIPLA views the Commission's rules as important steps in the implementation of the Trade Act and the Congressional intent underlying the Act.

As the enclosed comments indicate, the AIPLA has grave concerns as to whether the proposed rules properly implement the mandates of the Trade Act and the intent of Congress to make Section 337 a more efficient and effective avenue of relief for aggrieved domestic industries.

I hope that the enclosed comments prove informative and useful to you.

I have also directed the appropriate number of copies of the AIPLA's comments to Ms. Laura Wilcox and Mr. Ed Mihalski.

Best wishes.

Sincerely yours,

Donald R. Dinan
AIPLA International Trade
Commission Committee

DRD/GJR:ced
cc: Laura Wilcox; Ed Mihalski
Enclosures

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**Report of the AIPLA International Trade Commission Committee: 1989 Mid-Winter Meeting**

Introduction

On January 26, 1989 the members of the AIPLA International Trade Commission Committee ("the Committee") held a meeting to comment on, formulate responses to, and offer suggested additions to recent proposed and interim rules issued by the International Trade Commission ("the ITC" or "the Commission") under 19 U.S.C. 1337 ("Section 337"). The meeting was chaired by Donald R. Dinan.

Section 337 is a provision of the Tariff Act of 1930, as amended. Under Section 337, the ITC can initiate investigations into unfair acts in the importation of and sale of imported items. Investigations are generally based on complaints filed by "domestic industries," i.e., a domestic company or companies that claim to be injured by the alleged unfair act. The majority of unfair acts investigated by the ITC are violations of intellectual property rights, especially infringements of patent and trademark rights. Among the particularly notable features of Section 337 investigations are: (1) they are conducted expeditiously under a statutory deadline of 12 months or up to 18 months in "more complicated" cases, and (2) the Commission can issue exclusion orders barring importation of offending items. Among the many complainants who have utilized Section 337 are Apple Computer, DuPont, Intel and Texas Instruments.

The Committee's meeting was characterized by a high degree of concern and unanimity regarding the Commission's promulgation of rules that run counter to Congress' intent to make Section 337 a more effective and efficient avenue of relief for aggrieved domestic industries. After years of debate and litigation at the ITC over such key issues as Section 337's injury, domestic industry and temporary relief provisions, Congress recently provided broad changes to Section 337 through passage of the Omnibus Trade and Competitiveness Act of 1988. Pub. L. No. 100-418, 102 Stat. 1107 (1988). The Commission is now in the process of promulgating proposed rules and making determinations that will have profound and lasting effects on the practice of intellectual property law under the newly-amended Section 337. Therefore, as all of the attending Committee members agreed, it is critical that we ensure that the voice of the AIPLA be heard during this critical process.

The key topics of discussion at the Committee meeting were: (1) the Commission's proposed "duty of candor" rules, 53 Fed. Reg. 44,900 (1988); (2) the Commission's interim rules regarding temporary relief, 53 Fed. Reg. 49,118 (1988); (3) Committee proposals regarding adoption of additional procedural rules by the

Commission; and (4) Commission practices with respect to access by inhouse counsel to confidential information submitted under a protective order.

1. The Commission's Proposed Duty of Candor Rules

The Commission's proposed rule provides for a duty of disclosure by complainants prior to the Commission's institution of an investigation. This proposed duty of candor is patterned after the standard of conduct articulated in 37 CFR 1.56 by the U.S. Patent and Trademark Office ("PTO"). However, as noted by the Commission, "[b]ecause practice before the Commission and the PTO differs in several respects, the Commission would not view PTO and court decisions interpreting the PTO as dispositive or necessarily persuasive authority, in applying the Commission's standards of conduct." 53 Fed. Reg. 44,901 (1988). Among the sanctions for violation of the duty of candor are reprimand, temporary or permanent disqualification from practice before the Commission, notification of appropriate professional associations/or licensing authorities, award of costs and attorneys' fees, and referral to the U.S. Attorney for prosecution. 54 Fed. Reg. 44,903. The proposed rules further contemplate special procedures for investigating alleged violations of the duty of candor and sanctions for filing frivolous allegations of violations of the duty of candor.

The Committee closely examined the text of the proposed rules and the Commission's comments on the proposed rules. The Committee determined that, rather than provide a clear and suitable standard of conduct, the proposed rules adopt a "material omission" standard that is indefinite and provides no guidance to prospective complainant. In fact, the PTO has recently issued a policy statement supporting modification of the very aspect of 37 CFR 1.56 that the Commission seeks to adopt. See Pat. Trademark & Copyright J. (BNA), Vol. 36, pp. 616-617 (1988). The Committee determined that the Commission's recent adoption of an analog to Fed.R.Civ.P. 11 of the Federal Rules of Civil Procedure provides a ready-made vehicle for sanctioning misconduct by complainants. The rule has the benefit of extensive explication by the federal judiciary and is fully applicable to the filing of defective complaints, the activity sought to be addressed in the Commission's duty of candor rules. In short, the Committee determined that, especially in light of the Commission's recent adoption of an analog to Fed.R.Civ.P. 11 of the Federal Rules of Civil Procedure, the proposed duty of candor rules add unnecessary complexity, uncertainty and cost to Section 337 investigations.

2. Interim Rules Regarding Temporary Relief

The Commission's interim rules regarding temporary relief have several features that give rise to concern. These features are: (1) a motion for temporary relief cannot be amended after institution of an investigation, 19 CFR 210.24(e)(7); (2) the Commission will presume that a bond should be posted by a successful applicant for temporary relief, 53 Fed. Reg. 49,120-121; (3) the bond amount can be between 10% and 100% of the complainant's sales revenues and licensing royalties from the product, 53 Fed. Reg. 49,121; (4) the bond can be forfeited in whole or part to the Department of Treasury if frivolousness or improper use of the temporary relief process is shown, 53 Fed. Reg. 49,126-127; (5) a successful applicant for temporary relief who is later unsuccessful at the permanent relief phase of the investigation will automatically be required to file a brief arguing against forfeiture of the bond, 53 Fed. Reg. 49,127; and (6) the Commission's forfeiture determinations will take into account a number of factors, including "[t]he extent to which the Commission has determined that Section 337 has been violated" and "[a]ny other legal, equitable or policy considerations that are relevant to the issue of forfeiture. 53 Fed. Reg. 49,128.

The Committee members determined that the prohibition of post-institution amendments to motions for temporary relief is unrealistic in light of the fact that discovery commences after the investigation has been instituted. If discovery or a response to the complaint reveals information pertinent to the issue of temporary relief, including bonding, amendment of the motion for temporary relief should be allowed in accordance with the standards set forth in Rule 210.22, the Commission rule governing amendments to complaints.

Regarding the imposition and calculation of temporary relief bonds, the Committee members concluded that the Commission's approach does not reflect the Congressional purpose of deterring improper use of the temporary relief process while, at the same time, making the temporary relief process a more effective and efficient avenue of relief for aggrieved domestic industries. The Committee members determined that the presumption of the necessity for a bond, as well as the potentially exorbitant amount of the bond, are not in proportion to any perceived need to deter frivolous or improperly motivated bond requests or improper uses of the temporary relief process. In short, the Committee members agreed that the presumption should be in favor of imposition of a small bond amount, if any at all, unless specific circumstances in a particular investigation lead the administrative law judge and the Commission to conclude that a more substantial bond is necessary. Further, other factors that supported the conclusions regarding the Commission's apparent readiness to impose substantial bond requirements are: (1) the availability under the Commission's interim rules of sanctions analogous to those available under Fed.R.Civ.P. 11 of the Federal Rules of Civil Procedure; and (2) potential availability of a civil remedy to respondents who have suffered injury from misconduct by a complainant. In essence, there are, even without imposition of a substantial bond, significant disincentives to abuse of the temporary relief process.

The Commission's Interim Rule 210.58 provides that a complainant must file a defense against forfeiture of a temporary relief bond within thirty days of a Commission determination that one or more of the respondents whose merchandise was covered by the temporary exclusion order have not violated Section 337 to the extent alleged in the motion for temporary relief and provided for in the temporary exclusion order. The Committee members concluded that such an automatic inquiry and briefing rests on an inappropriate presumption that an unsuccessful complainant's motives regarding temporary relief must necessarily be called into question. Such an approach is wasteful of Commission and party resources because it automatically raises issues that may not merit consideration, i.e., the question of the propriety of the temporary relief motion may not be an issue if it is clear to all parties, including the investigative attorney, that there is no legitimate basis for seeking forfeiture of the bond. The better approach to determining whether forfeiture is appropriate is to place the burden of raising the issue of frivolousness or improper motivation on the parties to the investigation. If in the view of the affected respondents or the Commission investigative attorney there are indicia of abuse by a complainant, the affected respondents or the Commission investigative attorney can file an appropriate motion and join the issue.

Finally, Interim Rule 210.58 contains a non-exhaustive list of factors that will be considered by the Commission in determining whether and to what extent forfeiture is appropriate. Because the bond is intended to deter frivolous motions and misuse, the Committee members concluded that forfeiture should occur only when it is established that the temporary relief process has been abused. Thus, the uncertain standard contained in Interim Rule 210.58 is unduly complex and uncertain. A better approach would be utilization of the Commission's analog to Fed.R.Civ.P. 11 of the Federal Rules of Civil Procedure to judge the propriety of the motion for temporary relief.

3. Proposed Adoption of Analogs to Rules 12, 19, 41, 59 and 60.

The Committee members agreed to draft and circulate for comment proposed Commission rules based on Federal Rules of Civil Procedure 12, 19, 41, 59 and 60. The following discussions provide summaries of the bases for the Committee's views regarding the propriety of adapting such rules for use in the Section 337 context.

(a) Fed.R.Civ.P. 12

Three particularly noteworthy aspects of Rule 12 are its provision for: (1) motions for a more definite statement; (2) motions to dismiss for failure to state a claim; and (3) motions for judgment on the pleadings. In essence, these provisions are intended to "streamline" litigation, identify with particularity the issues in dispute, and remove inappropriate matters from the courts' docket. Especially in light of the time pressures of Section 337 litigation, the provisions and intentions of Rule 12 are particularly applicable to Section 337 proceedings and should be part of the Commission's rules.

(b) Fed.R.Civ.P. 19

Rule 19 provides for joinder of persons needed for complete and just adjudication. Section 337 proceedings are analogous to court proceedings in that respondents are placed at risk of an injunctive order and, in instances where there is res judicata, estoppel or simply judicial deference to the Commission, respondents can be subject to damage liability in a court based on evidence from a Section 337 proceeding. Therefore, the considerations embodied in Rule 19 are fully applicable to Section 337 investigations.

(c) Fed.R.Civ.P. 41

Rule 41 provides for voluntary and involuntary dismissals. Tailored to the special features of Section 337 investigations, such as the presence of a Commission investigative attorney with full party status, the provisions of Rule 41 should also be applicable to litigation under Section 337. Circumstances leading to dismissals of judicial actions can also be present in Section 337 investigations.

(d) Fed.R.Civ.P. 59

Rule 59 provides for the grant of a new trial "to any or all parties and on all or part of the issues." Under Rule 59 a court presiding over a nonjury trial can open the judgment, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment. Because hearings under Section 337 are analogous to nonjury trials in district courts, circumstances giving rise to the need for a Rule 59 motion may also be present in the Section 337 context.

(e) Fed.R.Civ.P. 60

Rule 60 provides for relief from a judgment or order in certain circumstances. The provisions of Rule 60(a) regarding correction of clerical errors would certainly be applicable to Section 337 proceedings, but the provisions of Rule 60(b) are particularly noteworthy. Grounds for relief from a final judgment, order or proceeding under Rule 60(b) include: (1) mistake, inadvertence, surprise or excusable neglect, (2) newly discovered evidence, and (3) fraud, misrepresentation or other misconduct of an adverse party. Motions based on these three grounds must be made within one year.

Although Section 337 investigations are technically government investigations, they are in essence litigation. Grounds that would provide a basis for a Rule 60 motion in district court litigation are just as likely to be present in Section 337 investigations. Therefore, an adaptation of Rule 60 for use in the Section 337 context would be appropriate.

4. Inhouse Counsel Access to Information Under a Protective Order

The issue of access by inhouse counsel to information held confidential under a Section 337 protective order raises a number of difficult issues and significant concerns. The Committee members agreed that further study of the issue is merited. Among the issues to be considered are: (1) whether a general rule allowing such access would be appropriate, and (2) whether the Commission should simply adopt the procedures and standards applicable in district court litigation.

5. Committee Resolutions

The attending Committee members agreed unanimously on the following resolutions:

1. The Commission's proposed rules regarding conduct of complainants prior to institution of investigations, imposition of a duty of candor, and related procedures and sanctions, 53 Fed. Reg. 44,900 (1988), are opposed by the Committee: The proposed rules provide for an uncertain and inappropriate standard of conduct, are unduly complex and, above all, are unnecessary in light of the Commission's recent adoption of an analog to Rule 11 of the Federal Rules of Civil Procedure.

2. The Commission's proposed rules regarding the posting and possible forfeiture of temporary relief bonds, 53 Fed. Reg. 49,118 (1988) are opposed by the Committee: The proposed rules provide for procedural impediments and onerous bond requirements that contravene Congressional intent that temporary relief be a more accessible remedy to aggrieved domestic industries.

3. The Committee will propose that the Commission adopt rules analogous to Federal Rules of Civil Procedure 12, 19, 41, 59 and 60: These rules are utilized in the federal judiciary to promote efficiency and fairness and are equally applicable to litigation in the Section 337 context.

The Committee members also agreed that further study and discussion should be devoted to the issue of access by inhouse counsel to information placed under a protective order in a Section 337 investigation.

CATERPILLAR®

Caterpillar Inc.

100 NE Adams Street
Peoria, Illinois 61629

May 2, 1989

Ms. Laura Wilcox
Hearing Administrator
Senate Finance Committee
SD-205
Washington, D.C. 20510

Dear Ms. Wilcox:

These comments are submitted on behalf of Caterpillar Inc., one of the nation's largest exporters, in response to the Senate Finance Committee's request for comments regarding the Omnibus Trade and Competitiveness Act of 1988.

Caterpillar asks the Senate Finance committee to review the merits of Section 1334 which eliminates duty drawback for antidumping and countervailing duty charges.

As near as we can tell, this one sentence change went unnoticed by virtually every trade association in Washington ... and we suspect most every legislator as well. Given the size of the 1988 trade bill -- 1128 pages -- such an oversight was certainly understandable.

However, regardless of the reasons for the oversight, this provision is now hurting the competitiveness of American exporters. For example, today with preliminary antidumping duties on antifriction bearings having been assessed -- and domestic producers quoting up to six-month lead times -- Caterpillar finds itself scurrying to reorganize its export logistics.

Before the Section 1334 provision, we tended to stock replacement parts in the U.S. without regard to country of origin or eventual destination. Today, we're changing our logistics to ensure that, where possible, foreign produced bearings are warehoused in Singapore and the U.K. rather than in the U.S.

A few Caterpillar plants are potentially exempt from this "drawback" change because they are located in foreign trade zones. But, it hardly seems fair to penalize the export competitiveness of Caterpillar's other plants (e.g., York, Pennsylvania), just because they happen to be located outside such zones.

We urge that the Senate Finance Committee initiate legislation which repeals the Section 1334 provision retroactively to its date of enactment.

Very truly yours,

William C. Lane

Representative
International Issues
Public Affairs Dept.

# Statement

Pharmaceutical Manufacturers Association

GERALD J. MOSSINGHOFF
PRESIDENT, PHARMACEUTICAL MANUFACTURERS ASSOCIATION

FOR THE
COMMITTEE ON FINANCE

Mr. Chairman and Members of the Committee:

The Pharmaceutical Manufacturers Association appreciates the opportunity to submit this statement to the Committee in connection with your hearings into implementation of the Omnibus Trade and Competitiveness Act of 1988. We applaud your statement of intent to oversee vigorously the implementation of the new Act.

PMA member companies are also deeply appreciative of the efforts of this Committee in the last Congress in developing this extremely important legislation and, in particular, those provisions which promote increased protection of intellectual property in other countries. Many of our member companies are heavily engaged in overseas markets and are all too familiar with the lack of intellectual property protection in some countries, as well as the presence of other unfair trade practices.

I will present a brief overview of the research-based pharmaceutical industry and the critical importance of intellectual property protection to its continued viability. I will also summarize the significant progress that has been achieved with this Committee's leadership in recent years in improving the protection of intellectual property internationally. Finally, I will discuss countries where the piracy of pharmaceutical inventions has achieved the status of national policy.

The Pharmaceutical Manufacturers Association represents more than 100 research-based pharmaceutical companies with 1988 sales of over $46 billion worldwide. About one-third or $16.3 billion of those sales were overseas. Through their own privately financed research and development, the research-based pharmaceutical industry -- here and abroad -- discovers most and develops virtually all of the new medicines introduced into world markets.

The annual investment in research and development by PMA member companies has doubled every five years since 1970 and in 1988 was $6.5 billion. That is more than all of the institutes of the National Institutes of Health spent on all biomedical research and development. In terms of R&D expenditures as a percentage of sales revenues, PMA companies' commitment has grown from less than 12% in 1980 to more than 16% in 1988. This is a higher ratio of R&D-to-sales than any other of America's high-technology industries. To discover, develop and obtain approval to market a new medicine takes from 7 to 10 years and costs on an average $125 million, up sharply from earlier years.

PMA companies contribute significantly to the U.S. positive balance of trade in pharmaceuticals, which in 1987 amounted to $394 million. Regrettably, this was less than one-third of the $1.2 billion surplus reported for 1983. The research-based pharmaceutical industry is highly competitive, with no one company supplying more than 4% of the world market. One must combine the sales of more than twenty PMA firms to meet 75% of the domestic market.

America's research pharmaceutical industry's commitment to research and development would be impossible without adequate and effective intellectual property protection, most importantly patents and trademarks. In no other industry are inventions which cost so much to discover and develop so easily and cheaply copied by patent pirates. Nations which provide adequate intellectual property protection appropriately share in the true cost of today's medicines and tomorrow's cures; those which deny such protection simply steal from those whose enterprises have saved untold millions of lives in this century and improved the quality of life for countless others.

A major milestone in United States' efforts to persuade other countries to adhere to fair trade standards and provide adequate intellectual property protection was the enactment of the 1984 Trade Act. That effort was reinforced by passage last year of the landmark Omnibus Trade and Competitiveness Act.

We applaud the efforts of both the Executive and the Legislative Branches of the Government in encouraging respect for intellectual property worldwide. Through those efforts -- particularly the work of the United States Trade Representative, the Department of Commerce and this Committee -- significant progress has been achieved.

Multilateral Developments

In the multilateral sphere, the ill-advised efforts begun in the mid-1970's to water-down the protections afforded by the Paris Convention have been stalled for five years. We hope that those efforts will be totally replaced by diplomatic efforts through the World Intellectual Property Organization to achieve harmonization of patent systems at an appropriately higher level of protection drawing upon the most advanced patent systems of the world.

We hope, too, that the General Agreement on Tariffs and Trade ("GATT") will be amended during the Uruguay Round quite properly to assure that patent piracy is declared to be a GATT-actionable unfair trade practice. We are aware of current moves to use the mechanisms of GATT to block U.S. efforts to root out unfair trade practices bilaterally. It would be a sad irony indeed if those moves were to succeed.

Bilateral Initiatives

The bilateral initiatives of the U.S. Government with several of our trading partners have contributed to what we believe is the current prevailing view internationally -- that stealing intellectual property is as reprehensible as other forms of theft. In reporting on these developments I should stress that in PMA's view adequate protection of pharmaceutical inventions can result only from patent protection of the products themselves, and not through half-way measures such as patents covering only the process of making pharmaceuticals.

Let me summarize from our perspective some of the developments which have occurred.

- As a result of discussions with the U.S. Trade Representative, Taiwan in December 1986 changed its patent law to provide protection for pharmaceutical products.

- President Suharto recently announced that the Indonesian Government had introduced legislation to establish that country's first patent law. It would provide product patent protection for pharmaceuticals.

- In November 1987, Canada amended onerous compulsory licensing provisions applicable to pharmaceutical inventions. While the Canadian law falls short of that of other developed countries, the 1987 Canadian amendments represent a significant development.

- As a direct result of a Section 301 action PMA filed with respect to Chile's patent law, that government is now considering changes in its law to protect pharmaceuticals. This prompted PMA to withdraw its Section 301 petition.

- In January 1987, Mexico enacted a new patent law which acknowledges the right of pharmaceutical products to enjoy patent protection. But that protection will not go into effect until 1997, in practical effect denying any real protection until early in the 21st century. As a result of this unsatisfactory amendment to the 1976 law, the United States on July 1, 1987 eliminated $400 million of Mexican imports from the Generalized System of Preferences or "GSP" program.

- PMA was encouraged that discussions with the USTR prompted Korea to enact product patent protection for pharmaceuticals, effective July 1, 1987. However, we remain concerned that the Korean Government has been slow to accept U.S. Government proposals to protect those products now in the governmental approval process. We are also concerned about other measures that are roadblocks to a truly open Korean market.

PMA has requested that the USTR continue to monitor the practical results of each of these initiatives, and to give special attention to Chile, Korea and Mexico. We also believe that potential new developments regarding patent protection in the Philippines should also be closely monitored.

China and USSR

There have been major developments in China and the USSR which reinforce our view that increasing respect for intellectual property is clearly becoming the international trend.

On April 1, 1985, China instituted its patent system and began to accept patent applications. As U.S. Commissioner of Patents and Trademarks from 1981 to 1985, I worked closely with China's patent officials to assist them in any way we could to encourage them to carry out their historic plans. Several Chinese patent examiners are graduates of the U.S. Patent and Trademark Office's Patent Academy. PMA applauds China's decision to establish a patent system and to join the Paris Convention. We are most favorably impressed by the professional way in which they carried out their plans.

As originally written, the China Patent Law does not cover pharmaceutical products, and that is disappointing to our industry. But a review effort is now in process in China, and we are most hopeful that in that effort, China will recognize the need not to discriminate against any field of technology, particularly one so vital to the health and welfare of its citizens and to Western investment in China.

The USSR recently published a draft of a new patent law -- one which is based on the best of the world's patent systems. The new law will do away with inventor's certificates and -- especially significant from our viewpoint -- will specifically provide patent protection for pharmaceutical products and fine chemicals.

Argentina, Brazil, India and Thailand

Four countries -- Argentina, Brazil, India and Thailand -- do not provide adequate patent protection for pharmaceuticals and do not seem to be disposed to redress that unfair trade practice.

- In response to a Section 301 petition filed by PMA last August citing the inadequacy of patent protection for pharmaceuticals in Argentina, the USTR initiated an investigation of the complaint in September. Initial negotiations with the Argentines indicate that they are not disposed to improve their patent law, and thus retaliatory measures seem likely. As with similar complaints against Brazil and Chile, PMA is not interested in retaliation, but only appropriate and fair treatment of our intellectual property.

- On October 20, 1988, President Reagan announced the imposition of 100% duties on $39 million of Brazilian imports of certain non-benzenoid drugs, consumer electronic items and paper products in retaliation for Brazil's failure to provide adequate patent protection for U.S. pharmaceuticals and fine chemicals. This action was prompted by PMA's Section 301 petition regarding Brazil, the first ever such Section 301 petition filed by a U.S. industry association. Unfortunately, that country continues to flaunt its disregard for principles of fair trade.

- India, along with Brazil, has not only rejected all bilateral efforts to bring about appropriate respect for intellectual property, but also has led the charge against multilateral efforts in GATT. At the same time, India is enjoying the benefits of science and technology agreements with the United States. In our view, India deserves special attention under the Omnibus Trade Act, and we have recommended that action to Ambassador Hills.

- Although PMA remains hopeful that the U.S. Government will persuade Thailand to provide adequate protection for pharmaceuticals, that has not yet happened. As the result of a Section 501 petition the PMA filed with respect to Thailand, the U.S. Government did withdraw $165 million of GSP privileges from Thailand. We have also recommended Thailand for special attention by Ambassador Hills unless the situation improves soon.

Mr. Chairman, in the remainder of my statement I discuss more completely the status of developments in Argentina, Brazil, India and Thailand. We believe that, because of their intractability, those countries should be the subject of the special mechanisms provided by the Omnibus Trade and Competitiveness Act of 1988. We also recommend that until GATT provides a multilateral basis for redressing unfair denial of intellectual property protection, the U.S. Government should reject any effort in GATT that would hamper our bilateral efforts to achieve that result.

Brazil

Of the actions taken by the USTR to date, the most notable is with respect to Brazil. On June 11, 1987, PMA filed a Section 301 trade petition with the U.S. Government protesting Brazil's failure to protect pharmaceutical patents. Brazil had amended its patent law in 1969 to deny all forms of patent protection for pharmaceuticals. Brazilian law specifically allows local companies to take U.S. pharmaceutical inventions without paying for them. PMA's petition was the first trade complaint based on lack of intellectual property protection filed by any industry under the 1984 amendments to the 1974 Trade Act. The U.S. Trade Representative accepted the complaint on July 23, 1987.

In our petition and subsequent representations, PMA estimated that our industry has sustained revenue losses between $100-$150 million a year since 1969 because of Brazil's patent policy.

Given the Brazilian Government's unwillingness to negotiate seriously on this issue, in October 1988 President Reagan imposed 100% duties on Brazilian exports of certain non-benzenoid drugs, consumer electronic items and paper products in retaliation for Brazil's failure to provide adequate patent protection for U.S. pharmaceuticals and fine chemicals. The sanction effectively excludes from the U.S. market Brazilian paper products and consumer electronic items. Brazil had ambitious export plans for these industries. The 100% tariff will remain in force until Brazil responds fully to the United States' concerns.

PMA welcomes the sanctions even though in our petition we made clear that we wished to avoid retaliation. However, the United States cannot permit its pharmaceutical industry to sustain substantial losses as a result of Brazil's refusal to recognize patent rights for pharmaceutical products and processes. In response, Brazil's President Sarney said Brazil would defend its interests at the GATT. In filing this complaint, the Brazilians asked for an investigations of what they described as "illegal U.S. restrictions."

Brazil is the global leader of the anti-patent countries. Only the imposition of a meaningful penalty will impress upon Brazil the seriousness with which the United States views the unauthorized appropriation of its citizens' intellectual property.

The U.S. Government should strongly oppose Brazil's complaint before the GATT by defending the Trade Act and its negotiating and sanction provisions. Should Brazil continue to ignore the pharmaceutical patent issue, the U.S. Government should be prepared to increase pressure through further sanctions and by whatever other means are available. One such measure should be reconsideration of Brazil's overall eligibility under the GSP program.

Argentina

On August 10, 1988, PMA filed a Section 301 petition against Argentina based on that country's denial of patent protection for pharmaceutical products. The U.S. Trade Representative initiated an investigation of the complaint on September 21. The complaint was similar to those previously filed by PMA against Brazil and Chile. Argentine Government officials have noted their concern over this issue and their desire to resolve the problem; however, based in large part on the political clout of a well-entrenched and thriving patent pirate industry, they have insisted that the "political reality" in Argentina precludes any change in their patent law in the near term.

In addition to the Section 301 complaint, the U.S. Government had previously expressed its concerns over Argentina's arbitrary and discriminatory pharmaceutical product registration system and its pricing policy, which has seriously eroded the profitability of U.S. pharmaceutical company investments in Argentina.

During the course of the Section 301 investigation, we recommend that the U.S. Government continue to engage the Argentine Government in serious negotiations. To date the Argentines have limited themselves to stating what they believe they cannot do. If the Argentines are unwilling to commit to change their law, we would reluctantly recommend that the U.S. Government impose meaningful trade sanctions on Argentina. We believe that the U.S. Government must also press the Argentine Government to make its product registration and pricing policies equitable and transparent.

India

India does not provide product patent protection for pharmaceuticals. With respect to process protection, India maintains an insufficient patent term, does not reverse the burden of proof to the potential patent infringer, maintains an open-ended compulsory licensing provision, and liberally interprets various other patent-related provisions of its law. With regard to trademark protection, India does not permit the licensing of foreign trademarks and their free usage within the country. India does not provide protection for well-known international trademarks, even if the marks have not been commercialized in India. With respect to investment, India maintains an elaborate system of both local-content manufacturing and export requirements. India requires the use of local components whenever local sources are available. India also negotiates the amount of export obligations which joint ventures are expected to meet. India permits U.S. pharmaceutical investment only through joint ventures with Indian partners. Foreign equity participation is generally limited to 40%. Although India maintains other impediments and barriers, these restrictions are sufficient to make India a very difficult place to do business.

Given India's business climate and attitude, the U.S. Government should not, in our view, engage in science and technology agreements or other arrangements, unless there are adequate safeguards and assurances. It is highly unfair, and indeed contrary to the U.S. Government's efforts on intellectual property protection worldwide, to permit India to take advantage of our strong patent laws when we find ourselves without intellectual property protection in India. Moreover, the U.S. Government should take more direct steps with the Indian Government to demonstrate its resolve with respect to India's restrictive patent, investment and trade policies. If consultations cannot produce tangible results, then the U.S. Government should use the mechanisms and sanctions authorized by the Omnibus Trade Act against that country.

Thailand

Because Thailand does not provide adequate intellectual property protection for pharmaceutical products, PMA filed a petition in May 1987 with the U.S. Government to withdraw benefits under the GSP. We regret that the Government of Thailand did not make any measurable progress towards eliminating the future pirating of any new pharmaceutical products in Thailand prior to the GSP deadline. We applaud the U.S. Government decision to deny Thailand some GSP benefits and to consider seriously designating Thailand a top candidate for a "special Section 301" action under the 1988 Trade Act this coming May. We believe the action which the U.S. Government takes in Thailand will set an important example to other countries that fail to adequately protect intellectual property.

Prior to a decision to make Thailand a "special Section 301" candidate in May, the U.S. Government should continue to encourage Thailand to commit to submitting a product patent law to the Thai Parliament by December 31, 1990; to allow all pending process applications to be converted to product applications under the new law, and to establish a mechanism prohibiting Thai pirates from copying, for a period of five years, any new pharmaceuticals which may be introduced in Thailand starting in 1989. If this approach fails to achieve any significant results, in our view, the U.S. Government should not hesitate to take strong action in May.

Summary

In summary, there is much good news and some bad news. There has been significant progress in encouraging individual countries to increase protection of intellectual property as a self-serving way of enhancing their own commercial development while at the same time living up to accepted international norms of fair trade. And there is a growing awareness in bilateral and multilateral fora of the critical importance of intellectual property protection to scientific and technological progress.

But there are also countries -- most notably Brazil and India -- which seem determined to stand against this tide. They are increasingly isolated in the international arenas, but they represent a major challenge to the United States and our responsible trading partners.

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